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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1886.**

No. 60. 7

HENRY E. DAVIS, ADMINISTRATOR *DE BONIS NON* OF PHILIP B. FOUKE, DECEASED, APPELLANT,

*vs.*

JOHN J. KEY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

**FILED SEPTEMBER 25, 1883.**

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Original Bill. Filed April* 13, 1881.

In the Supreme Court of the District of Columbia this thirteenth day of April, 1881.

HENRY E. DAVIS, Adm'r *d. b. n.* of Philip B. Foukes, Complainant.
*vs.*
JOHN J. KEY, Defendant.
} Equity. No. 7674.

The complainant states as follows:

1. That he is a resident of the District of Columbia, and files this his bill of complaint as administrator *de bonis non* of Philip B. Fouke, late of the said District, deceased.

2. That the defendant, John J. Key, is likewise a resident of the said District of Columbia.

3. That under and by virtue of a certain convention entered into on the 4th day of July, 1868, by and between the United States of North America and the Republic of Mexico, and subsequent
2 conventions entered into by and between the said governments on the 19th day of April, 1871, the 27th day of November, 1872, the 20th day of November, 1874, and the 29th day of April, 1876, a joint commission of the said United States and the said Republic of Mexico, consisting of a commissioner on behalf of each government and an umpire named by the said commissioners, sat at Washington city, District of Columbia, for the adjudication of all claims of citizens of either of the said countries against the government of the other arising out of transactions of a date subsequent to the 2nd day of February, 1848, the said commission having begun its sessions on the 31st day of July, 1869, the functions of the said commissioners having ceased on the 31st day of January, 1876, and the duties of the umpire having been finally discharged by the 20th day of November, 1876; that for the payment and satisfaction of the awards which might by the said commission be against it made the said Republic of Mexico, by the said convention of July 4th, 1868, obligated itself to pay to the said Government of the United States, in certain annual instal-
3 ments, the total amount of such awards; that by an act of the Congress of the said United States, approved on the 18th day of June, 1878, the Secretary of State of the said United States was designated and authorized in behalf of the said Government of the United States to receive the said instalments and to distribute the same when received in ratable proportions to the claimants in whose favor the awards aforesaid have been made, or their legal representatives or assigns; that five (5) of the said instalments have been paid by the said Republic of Mexico and received and distributed in whole or in part by William M. Evarts and James G. Blaine, Secretaries of State of the said United States, and that there remains other of the said instalments yet to be paid, received, and distributed as aforesaid.

4. That for the purpose of prosecuting before the joint commission

aforesaid claims in behalf of citizens of the said United States of America against the said Republic of Mexico, and of citizens of the said Republic of Mexico against the said United States of America,

the defendant, John J. Key, your complainant's intestate, the
4 said Philip B. Foukes, one Harry T. Hays, and one Jacob O. De Castro, on the 10th day of August, 1869, by articles in writing, formed and entered into a copartnership upon and under, among others, the following terms, to wit: That the said Fouke, Hays, and De Castro should procure claims of citizens of the respective countries named against the government of the other, attend to taking the necessary proof respecting the said claims, and send the same to the defendant, John J. Key, at Washington, accompanied with a power of attorney authorizing the said Key to prosecute the said claims and receive whatever amounts might be awarded thereon, and that the defendant, John J. Key, should receive one-half of all fees paid under the copartnership, the other half to be divided between Fouke, Hays, and De Castro, a copy of the articles of the said copartnership, marked Exhibit A, being annexed hereto and prayed to be taken as part hereof.

5. That on the 24th day of September, 1869, your com-
5 plainant's intestate, the said Philip B. Fouke, and the defendant, John J. Key, by articles in writing, formed and entered into a copartnership for the purpose of practicing, at the city of Washington and District of Columbia, the profession of the law in all matters pertaining to the said profession; that, among other things, it was by the articles provided and agreed that all sums received by the said Fouke or the said Key under the agreement of copartnership of August 10th, 1869, as above set forth, should be equally divided by and between the said Fouke and the said Key—a copy of the articles of the said copartnership of September 24th, 1869, marked Exhibit B, being annexed hereto and prayed to be taken as part hereof; and that under and by virtue of the said agreement and articles of copartnership your complainant's intestate, the said Philip B. Fouke, and the defendant, John J. Key, as copartners under the firm name and style of Fouke and Key, did in fact enter upon and follow the practice of the said profession of

the law at the said city of Washington and District of Co-
6 lumbia.

6. That to the joint commission aforesaid, in the year 1870, one Benjamin Weil, purporting to be a naturalized citizen of the United States, resident at the city of New Orleans, State of Louisiana, presented his certain claim against the said Republic of Mexico for the seizure of certain cotton on September 20th, 1864, on the road between Piedras Negras and Laredo, the said claim being numbered 447 on the docket of American claims before the said commission; that on the — day of ——, 1875, the said claim was allowed by the umpire of the said commission, the Right Honorable Sir Edward Thornton, K. C. B., Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary near the said United States, by which allowance and the decision of the said umpire—the same having been entered on the records of the said commission on the 29th day

of November, 1875—the said Weil was awarded the sum of $487,-
810.68; that on account of the said award, and for the pay-
7 ment and satisfaction thereof, the said Republic of Mexico
has paid, and William M. Evarts, lately Secretary of State of the said United States, received and distributed, to wit, in August, 1880, four (4) instalments, amounting in all to $136,995.96; that on the like account the said Republic of Mexico has further, to wit, on the 28 January ultimo paid, and James G. Blaine, now Secretary as aforesaid, received and distributed, another or fifth instalment, amounting to $34,893.68, and that there remain yet to be paid, received, and distributed, on the account and in the manner aforesaid, other and further instalments, amounting in all to $315,921.04.

7. That under and in accordance with the said agreement of copartnership of August 10th, 1869, aforesaid the said claim of the said Benjamin Weil was procured by the said Fouke, Hays, and De Castro, and they attended to taking the necessary proof in relation thereto, and sent the same to the defendant, John J. Key, at
Washington, accompanied with a power of attorney from the
8 said Weil authorizing the said Key to prosecute the said
claim, and that the said claim was in fact presented and prosecuted before the joint commission aforesaid by the defendant, John J. Key, not alone however, but (by reason of the agreement and copartnership made and entered into on the 24th day of September, 1869, as aforesaid) in connection with your complainant's intestate, the said Philip B. Fouke; and afterwards, also, in connection with one Wm. H. Boyce, who was engaged by the said Benjamin Weil to assist the said Fouke and Key.

8. That before the rendering of the said award on account of the said claim the said Benjamin Weil became and was adjudged a person of unsound mine; that thereupon his wife, one Alice Weil, was appointed and became in due form and according to law his curatrix or committee, and that in her own right and as such curatrix, before the preparation and execution of the memorandum of agree-
ment hereinafter set forth, she duly appointed one Lambert
9 B. Cain her true and lawful attorney-in-fact in and about the
matter of the said award and the interests of herself and the said Benjamin Weil therein.

9. That, at Washington city and District of Columbia, on the 5th day of November, 1875, the said Lambert B. Cain, as attorney-in-fact of the said Alice Weil, in her own right and as curatrix of the said Benjamin Weil as aforesaid, of the first part, and, among others, the defendant, John J. Key, your complainant's intestate, the said Philip B. Fouke, the said Harry T. Hays, and the said Jacob O. De Castro, of the second part, executed a certain memorandum of agreement by which the several amounts due as fees by and from the said Benjamin Weil to the said Key, the said Fouke, the said Hays, and the said De Castro for and concerning their service in and about the said claim were fixed, adjusted, and declared as against the said Weil and in accordance with the terms of the copartnership entered into on the 10th day of August, 1869, between the said Key, Foukes, Hays, and De Castro as aforesaid, a copy of which said memo-

10 randum of agreement, marked Exhibit C, is annexed hereto and prayed to be taken as part hereof.

10. That on the — day of ——, 1877, the said Benjamin Weil departed this life; that at the said city of New Orleans aforesaid the said Alice Weil became and was duly declared his, the said Benjamin Weil's, legal successor or representative and tutrix of his and her sole minor child; that as such successor and tutrix as aforesaid, she, the said Alice Weil, by and with the knowledge and sanction of the court which had admitted and designated her as such, duly appointed and constituted the said Lambert B. Cain her true and lawful attorney-in-fact; that thereafter, to wit, on the 23d day of June, 1880, and after the decease of your complainant's intestate, the said Philip B. Fouke, as will more fully appear hereafter, the said Lambert B. Cain, as attorney-in-fact of the said Alice Weil, in her own right and as successor and tutrix as aforesaid, executed

11 in favor of the said Key a certain instrument setting over and conveying to the said Key a certain share of the said award to the said Benjamin Weil as aforesaid equal in amount to the sum fixed, adjusted, and declared by the said memorandum of agreement of November 5th, 1875, aforesaid, as due to the said Key as against the said Benjamin Weil, and giving to the said Key power and authority in his own right and name, so far as the estate of the said Weil was concerned, to collect and receive the same, to wit, one-fourth of the whole amount of the said award after the same had been reduced by the sum of $59561; that under and by virtue of the said instrument so on the said 23rd day of June, 1880, executed as aforesaid the defendant, John J. Key, has collected and received out of the instalments already distributed on account of the said award to the said Benjamin Weil the ratably proportioned sum of $37,415.55, and that the said Key, unless prevented, will further collect and receive a like ratable proportion out of each and every instalment that may hereafter be distributed on account

12 of the said award.

11th. That your complainant's intestate, the said Fouke, in his lifetime received nothing on account of the 8⅓ per cent. fixed and declared by the said memorandum of agreement of November 5th, 1875, as payable to him by and from the said Benjamin Weil or his duly constituted representative as aforesaid; that the said Lambert B. Cain received in behalf of the estate of the said Fouke the proportionate amount of the said 8⅓ per cent. included in the four instalment- distributed in August, 1880, as aforesaid; that the said Cain claims to have accounted for the same, amounting to $9,940.15, more or less, to Emma M. Fouke, lately administratrix of the said Philip B. Fouke; that for the purposes of this suit, and for such purposes only, your complainant is ready and willing and hereby offers to admit the same to have been received to the estate of his intestate, the said Fouke, and to account to the defendant, John J. Key, for the same in full, and that your complainant

13 has himself received in behalf of the estate of his intestate the proportionate amount of the said 8⅓ per cent. included in the fifth instalment on account of the said awards, towit, the sum of

$2,531.80, for which sum he is ready and willing and hereby offers to account to and with the said defendant in full.

12. That besides the said claim of the said Benjamin Weil as aforesaid there was presented and prosecuted before the said joint commission by the said Fouke and Key the certain claim of Jonas Marks and Company against Mexico, numbered 639 on the docket of American claims before the said commission, on which said claim there was procured by the said Fouke and Key an award of $52,581.37, and there were also presented and prosecuted before the said commission by the defendant Key certain other claims on which awards were secured, aggregating $89,638.96; that for the services of the said Fouke and Key and the said Key in and
14 about the said claims the said Key has received, and will, doubtless, further receive, payment, remuneration, and reward, and that by virtue of and and in accordance with the articles of copartnership of September 24th, 1869, aforesaid, the said Key was and is liable and in law bound to account to and with the said Fouke *on* his duly qualified legal representative for any and all fees and sums received by him on account of services in and about all the said claims.

13. That besides the claims hereinbefore mentioned there were managed, conducted, and prosecuted by your complainant's intestate, the said Fouke, and the defendant Key, other causes, matters, and business pertaining to the profession of the law and within the scope, intent, and meaning of the said copartnership of September 24th, 1869.

14. That at Washington city and District of Columbia, on the 3rd day of October, 1876, and before any distribution, as aforesaid, of any instalment on account of the claims and awards here-
15 inbefore mentioned, your complainant's intestate, the said Philip B. Fouke, departed this life; that his widow, Emma M. Fouke, was duly appointed and qualified as his, the said Fouke's, administratrix; that on the 10th day of December, 1880, she was removed by this honorable court from her said office and your complainant appointed in her stead, and that on the 13th day of December, 1880, your complainant duly qualified in the penal sum of $40,000 and received his letters of administration *de bonis non* on the estate of the said Philip B. Fouke; all which will appear from the probate records of this honorable court, to which reference is made, and which it is prayed may be taken as part of this bill of complaint and read at the hearing hereof.

15. That notwithstanding the premises the defendant, John J. Key, although requested, has never accounted to and with your complainant's intestate, the said Fouke, or with his legal representatives, or any of them, for his, the said Fouke's, share and
16 interest in the dealings and transactions of the copartnership of September 24th, 1869, as aforesaid, but so to do has, notwithstanding such request, wholly failed, neglected, and refused, and that in particular the said defendant Key, although requested so to do, has not accounted as aforesaid for the receipts by him on account of the said awards on the said claim of Benjamin Weil and

the certain claims in paragraph 12 of this bill of complaint mentioned, but so to do has wholly failed, neglected, and refused and still preemptorily and positively refuses.

16. That the said defendant Key, as your complainant is informed and believes, and so believeing avers and charges, is possessed of no real estate whatever, and of no personal estate save and except such as has *occured* to him as or by means of the proceeds of the various claims and business prosecuted and conducted by him and the said Fouke, as in this bill of complaint set forth; that by his, the
17 said Key's, refusal to account to and with your complainant's intestate, the said Fouke, or his legal representatives, the estate of the said Fouke is threatened with irreparable injury; and that unless the said Key is enjoined from further management of or intermeddling with the affairs and funds of the said copartnership and a proper person appointed to manage and control the same the said Fouke'r estate and your complainant, as his legal representative, will actually and in fact suffer such irreparable injury.

*Prayers.*

Your complainant therefore prays:

1. That an account may be taken by and under the decree and direction of this court of all the partnership dealings and transactions between, by, or on account of your complainant's intestate, the said Fouke, and the defendant, John J. Key; that in tak-
18 ing the said account all necessary inquiries may be made and directions given, and that what shall appear thereon to be due from the said defendant Key may be decreed to be paid by him.

2. That a proper person may be appointed to receive, collect, and get in all the outstanding debts and moneys due to or on account of the said partnership business, and also to take possession of all the effects and property belonging to the said partnership.

3. That the defendant, John J. Key, his agents, servents, and attorneys, may be restrained by the order and injunction of this court from demanding, receiving, or obtaining possession of any debts, money, or property due or belonging to the said copartnership, and particularly that until the further order of the court he be so restrained from receiving or obtaining possession of any moneys, &c., to be paid or distributed on account of the claims and awards in the aforegoing bill of complaint mentioned, and that he
19 be ordered to deliver up to such person as may be appointed by the court all the moneys, effects, and property belonging to the said copartnership now in his possession or power, and particularly all moneys, drafts, or funds now in his possession or control which he has received or collected on account of any of the claims in this bill of complaint mentioned.

4. That your complainant may have such other and further relief in the premises as the nature of his case may require.

5. That process may issue from this court against the said John J. Key, requiring him to appear — answer this bill, the complain-

ant hereby, in accordance with rule No. 64 of the equity rules of this court, waiving an answer under oath.

The defendant to this bill of complaint is John J. Key.

20 H. E. DAVIS,
*Adm'r d. b. n. of Philip B. Fouke.*

H. E. Davis. pp.

WASHINGTON CITY, }
*District of Columbia,* } *ss:*

Henry E. Davis, the complainant in the aforegoing bill of complaint mentioned, being first duly sworn, deposes and says that he has read the said bill by him subscribed and knows the contents thereof, and that the facts therein stated on his own knowledge are true, and those stated on his information he believes to be true.

H. E. DAVIS.

Subscribed and sworn to before me April 13, 1881.

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
*Ass't Clerk*

21 EXHIBIT A.

Articles of copartnership entered into between John J. Key, of the city of Terre Haute, State of Indiana; Philip B. Fouke, now of the city of New Orleans, State of Louisiana; H. T. Hays and J. O. De Castro, both of the city of New Orleans, State of La.

It is agreed between said parties that a copartnership is this day formed between them for the purpose of prosecuting claims in behalf of the citizens of the United States of America against the government of Mexico and of citizens of the Government of Mexico against the Government of the United States of America.

It is agreed between said parties that the said Fouke, Hays and De Castro shall procure claims of citizens of the respective government- named against the other and attend to taking the necessary proof, and that the said claims shall be sent to said Key, at Washington city, accompanied with a power of attorney from the claimant authorizing said Key to prosecute said claims, and authorizing him to receive from said governments any and all amounts

22 that may be due and coming to them.

That said Key shall retain all fees, as agreed on by said parties, and shall pay over to said parties, acting in the capacity of special attorneys for that purpose of the claimant, the amount due to them as such special attorneys, both for the amount awarded the claimant and for fees due Hays, Fouke, and De Castro in the case, either at Washington, New York, or New Orleans, as he may be directed from time to time by either Hays, Fouke, or De Castro, acting as the special agent of the claimant, whose power as such in all cases sent by them is, to all intents and purposes, recognized by the parties of this contract.

That said Key shall retain in all cases, when no special direction is

given, the portion due to said firm, paying over to the other parties at once; or accounting in such manner as they may from time to time direct, for the proportion of the fees so retained.

It is agreed that all fees received under this copartnership
23 shall be divided, one-half part to said Key and the other half part to said Fouke, Hays, and De Castro.

Said Key is to remain at Washington city, said Hays at New Orleans, said De Castro to be in the city of Mexico, and said Fouke is to render his services whenever they shall be needed.

In witness whereof we have hereunto set our hands and seals this 10th day of August, 1869.

| | | |
|---|---|---|
| | JOHN J. KEY. | [SEAL.] |
| | P. B. FOUKE. | [SEAL.] |
| (Signed) | HARRY T. HAYS. | [SEAL.] |
| | J. O. DE CASTRO. | [SEAL.] |

24 EXHIBIT B.

*Articles of Copartnership Entered into between Philip B. Fouke and John J. Key.*

It is agreed between said parties that a partnership be this day formed between them for the purpose of practicing law in the city of Washington, District of Columbia, and that partnership shall be equal.

It is agreed each party shall give their undivided attention to the business, and that said business embraces all matters pertaining to the profession of the law, including prosecution of claims against the Government of the United States, either before Congress or the Court of Claims. Neither party shall have the right to use the name of the firm except in such matters as pertain to the business of attorneys.

It is understood and agreed that all sums received by said Key or Fouke under an agreement of partnership heretofore formed by said Key, Fouke, H. T. Hays, and J. O. De Castro shall be equally divided by said Fouke and Key.

25 It is agreed that an account of expenses shall be kept between said parties pertaining to their business (except that part in prosecuting claims under the treaty of July 4th, 1868, between the United States and Mexico), and all sums received by either partner from their business and all sums retained by either party shall be entered on a book kept for that purpose, and the same shall be subject to the control of both.

It is agreed that this copartnership shall continue until the 24th day of September, 1871, unless dissolved by mutual consent.

In witness whereof we have this 24th day of September, 1869, set our hands and seals.

| | | |
|---|---|---|
| (Signed) | P. B. FOUKE. | [SEAL.] |
| | JOHN J. KEY. | [SEAL.] |

26 EXHIBIT C.

*Agreement. Recorded Nov'ber* 6, 1875.

L. B. CAIN, Att'y, with LYHANUS C. BOYNTON *et al.*

"Copy." Liber 802, folio 154, *et seq.*

This agreement, made and entered into in the city of Washington, D. C., betwen L. B. Cain, of the city of New Orleans, State of Louisiana, attorney-in-fact of Alice Weil, for herself and as curatrix of Benjamin Weil, her husband, a person of unsound mind, who was so declared to be by an order of the second district court of the parish of Orleans, in the said State of Louisiana, and in proceeding before said court, the law of the State of Louisiana having been fully complied with, the said Alice Weil was appointed curatrix of her interdicted husband, Benjamin Weil, above named, on the 20th day of August, 1875, and an authenticated copy of the proceedings of the said second district court for the parish of Orleans, in the matter of the interdiction of Benjamin Weil, No. 38115, is made a part hereof and attached to this instrument of writing, of the first part, and Lyhanus C. Boynton, of the city of Washington, D. C., Harry
27 T. Hays, and Jacob O. De Castro, of the city of New Orleans, Philip B. Fouke and John J. Key, now residents of the District of Columbia, and W. W. Boyce, attorney-at-law, of Washington, D. C., of the second part.

Whereas Benjamin Weil, in the year eighteen hundred and sixty-nine, filed a claim before the American and Mexican Joint Commission, then in session in the city of Washington, D. C., United States of America, under a convention between the United States of America and Mexico of July 4th, 1868, for the sum of $334,950 three hundred thirty-four thousand and nine hundred and fifty dollars; and whereas said case was tried and heard before said commission; and whereas an award has been rendered by the umpire and returned to the secretary of said commission to be finally entered on the records of said commission, for the sum of $285,000—two hundred and eighty-five thousand Mexican gold dollars—with interest at six per cent. per annum from the 20th of September, 1864, to the date of the final close of said commission;

28 And whereas on the 15th July, 1874, the said Benjamin Weil appointed the said Philip B. Fouke his attorney and authorized the said Fouke to pay, pledge, or hypothecate any portion of said claim to defray expenses, fees, and other moneys expended, laid out, or appropriated, not to exceed the sum of one hundred thousand dollars ($100,000); and whereas the said Fouke employed the said Sylvanus C. Boynton, Esq., and agreed for and on behalf of said Weil to pay said Boynton the sum of ($59,561) fifty-nine thousand five hundred and sixty-one dollars, to be deducted from the aggregate amount which might be found due at the close of the commission;

And whereas for the purpose of executing said agreement made by said Fouke with the said Boynton, under and by authority of

said Weil, J. L. B. Cain, as attorney-in-fact of Alice Weil, for herself and as curatrix of the said Benjamin Weil, — assign and transfer to the said Sylvanus C. Boynton the sum of ($59,561) fifty-nine
29 thousand five hundred and sixty-one dollars of said award, which said sum is to be deducted from the entire amount of the ($285,000) two hundred and eighty-five thousand dollars, with interest from 20th September, 1864, until the close of this commission, as will fully appear by the records of the case before said commission, and it is expressly understood that the said S. C. Boynton shall have a lien of said amount of ($59,561) fifty-nine thousand five hundred and sixty-one dollars on said award—the power of attorney from Benjamin Weil to Philip B. Fouke is made part hereof and attached hereto; and whereas on the 10th September, 1869, the said B. Weil executed a power of attorney to John J. Key, a true copy of which is made part of this agreement and attached hereto; and whereas on the 10th day of September, 1869, the said B. Weil executed the following agreement:

Whereas on the tenth day of September, eighteen hundred and sixty-nine, in the city of New Orleans, parish of Orleans, State
30 of Louisiana, I executed an irrevocable power of attorney in favor of John J. Key authorizing and empowering the said John J. Key to prosecute before the American and Mexican Joint Commission my claim in the sum of three hundred & thirty-four thousand nine hundred & fifty dollars, under the convention between the United States of America and Mexico of July fourth, eighteen hundred and sixty-eight:

Now, know all men by these presents that, for and in consideration of the legal and professional services heretofore rendered and hereinafter to be rendered by my said attorney, the said John J. Key, *that* I have this day agreed to pay, and am finally bound, and hereby oblige myself to pay, to J. J. Key and H. T. Hays a sum equal to one-half of the amount recovered.

Witness my hand and seal this tenth day of September, eighteen hundred and sixty-nine.

(Sig.) B. WEIL.

Witness:
OTTO OPPERMAN.
GEORGE STEHL.

31 And the same is made part of this agreement and the original attached hereto.

Whereas the said B. Weil agreed to pay to J. J. Key and H. T. Hays one-half of the amount recovered: Now, for the purpose of executing said agreement, I hereby transfer to the said John J. Key, after deducting the sum of $59,561, fifty-nine thousand five hundred and sixty dollars, from the aggregate amount of said finding at the close of said commission, one-fourth of said award, amounting to $——, at the close of said commission, it being understood that said Key is entitled to one-fourth of said award subject to the amount heretofore deducted; and it is agreed that the said John J. Key shall

have a lien to the extent of one-fourth of said award, with full authority and power to control the same.

Whereas Harry T. Hayes, Philip B. Fouke, and Jacob O. De Castro are interested equally in one-fourth of said award coming to said H. T. Hays by the agreement heretofore referred to; and
32 whereas by the consent of said H. T. Hays, and by his direction, I subdivide the amount due him under said agreement into three parts, and I hereby assign to the said Harry T. Hays (8⅓ per cent.) eight and one-third per cent. of said award, and to Jacob O. De Castro (8⅓ p'r ct.) eight and one-third per cent. of said award, and to Philip B. Fouke (8⅓ p'r ct.) eight and one-third per cent. of said award, which three amounts make the (25 p'r ct.) twenty-five per cent. which is due to Harry T. Hays under said agreement. This is done by the express directions of the said Harry T. Hays. And the said parties are to hold their interest in the same manner as the said John J. Key holds his interest.

Whereas Benjamin Weil employed W. W. Boyce as assistant counsel and agreed to pay him seven and a half per cent. of the award that might be made in his favor; and whereas said Boyce has agreed to modify his agreement and receive as his fee five per cent. instead of seven and a half per cent.; and whereas it is understood
33 that the said sum of ($59,561) fifty-nine thousand five hundred and sixty-one dollars is first to be deducted from the aggregate amount of said award: I hereby transfer and assign to the said W. W. Boyce (5 p'r ct.) five per cent. of said award, in conformity with the foregoing agreement as modified by the said W. W. Boyce; and the said Boyce is to have a lien on said award in the same manner as the said H. T. Hays, J. O. De Castro, Philip B. Fouke, John J. Key, and S. C. Boynton.

In witness whereof the said L. B. Cain, as attorney for Alice Weil, and as attorney for Alice Weil, curatrix of Benjamin Weil, hath hereunto set his hand and affixed his seal at Washington, District of Columbia, on this fifth day of November, A. D. eighteen hundred and seventy-five. And in witness whereof the said Sylvanus C. Boynton, John J. Key, Philip B. Fouke, Harry T. Hays, Jacob O. De Castro, and W. W. Boyce have hereunto set their hands and seals this fifth day of November, A. D. eighteen hundred and seventy-five.

PHILIP B. FOUKE. [SEAL.]
L. B. CAIN. [SEAL.]
34 HARRY T. HAYS, [SEAL.]
*Att'y for Alice Weil and for Alice Weil, Curatrix of Benjamin Weil, interdicated.*
J. O. DE CASTRO. [SEAL.]
SYLVANUS C. BOYNTON. [SEAL.]
JOHN J. KEY. [SEAL.]

Executed in the presence of—
N. CALLAN.
JNO. B. BAGLEY, JR.

DISTRICT OF COLUMBIA,
*County of Washington,* } *ss:*

Personally appeared before me, the undersigned, Nicholas Callan, a notary public in and for the District of Columbia and county of Washington, on the fifth day of November, eighteen hundred and seventy-five, L. B. Caine, whose name is subscribed to the foregoing instrument of writing as attorney of Alice Weil, and for the said Alice Weil as curatrix of Benjamin Weil, and acknowledged said signature to be his and the execution thereof for the purpose set forth in said instrument of writing, and personally appeared before the said undersigned, John J. Key, Philip B. Fouke, Harry
35 T. Hays, Jacob O. De Castro, and Sylvanus C. Boynton, whose signatures are affixed to the foregoing instrument of writing, and each acknowledged said signature to be his own in the execution thereof for the purpose set forth in said instrument of writing.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at Washington, D. C., this fifth day of November, A. D. eighteen hundred and seventy-five.

[NOTARIAL SEAL.] N. CALLAN,
*Notary Public.*

Endorsement: This is to certify that the within is a true and verified copy of a deed as recorded in liber No. 802, folio 154, *et seq.*, one of the land records for the District of Columbia. Washington, D. C., January 29th, 1881. (Signed) Geo. F. Schayer, dep. recorder. [Seal of recorder of deeds.]

36 *Affidavit of R. Coyle. Filed April* 13, 1881.

In the Supreme Court of the District of Columbia.

H. E. DAVIS, Adm'r *d. b. n.* of Estate of Philip B. Fouke, Dec'd, Complainant,
*vs.*
JOHN J. KEY, Defendant.
} No. 7674. Equity Doc. No.

DISTRICT OF COLUMBIA,
*County of Washington,* } *ss:*

Randolph Coyle, being duly sworn, deposes and says:

I am a member of the bar of this court and a resident of the city of Washington.

From September 1869 to April 1870 I was a clerk in the office of the American secretary of the United States and Mexican Claims Commission, then sitting in the city of Washington, and from April 1870 until the conclusion of the labors of the umpire of the commission, in December, 1876, I was the American secretary of the commission.

During this whole period I had in my custody the files of
37 all the claims of American citizens against Mexico filed before the commission. I had a minute knowledge of the contents

of these files, and became acquainted with the several attorneys engaged in prosecution of claims before the commission.

Among the attorneys practicing before the commission were Messrs. Philip B. Fouke and John J. Key, who practiced under the firm name of Fouke and Key. They occupied offices first on the west side of 14th street, a few doors north of F street N. W., and afterwards on F street between 14th and 15th streets N. W., upon both of which houses I have repeatedly seen, during the time referred to, their sign with the names "Fouke & Key," "attorneys-at-law" or "counsellors-at-law."

Both of these gentleman were in the habit of calling frequently at the office of the commission upon business connected with the cases in which they appeared as counsel; and, as the rules of the commission forbade the withdrawal by counsel of papers from the office, they would examine the files of their cases and make
38 their notes and memoranda in my office room and in my presence. Among the cases in which they were concerned as counsel, and which they examined in my office, were those of Benjamin Weil *vs.* Mexico, No. 447, and Jonas Marks & Company, No. 639, on the docket of American claims against Mexico.

The paper hereto annexed, marked "Exhibit R. C., No. 1," is a true copy of the memor-al addresses to the commission in the case of Weil, the original of which, in manuscript, is now on file in the Department of State among the archives of the commission, and with which I have compared this copy. In the original the signature to the memorial, "Benjamin Weil, by John J. Key, his atto.-in-fact," and the counter signature, "Fouke and Key, solicitor- and atto's for Benj. Weil," as well as the signature to the affidavit appended to the memorial, "John J. Key, attorney-in-fact of Benj. Weil," are in the handwriting of John J. Key, with which I am familiar, having frequently seen him write and having received and filed many letters written by him.

39 The annexed paper, marked "Exhibit R. C., No. 2," is a true copy of the original memorial addressed to the commission in the case of Jonas Marks & Co. I have recently compared the copy with the original on file in the Department of State. In the original all the signatures to the memorial, as well as the counter signature, "Fouke & Key," &c., and the signatures to the affidavit appended to the memorial, are in the handwriting of John J. Key, the matter reading just as in the printed copy.

In the case of Weil I received and filed many letters in the handwriting of John J. Key and signed, in his handwriting, "Fouke and Key, attorneys for claimant." These letters are now on file among the papers in the case at the Department of State, where I have recently examined them.

RANDOLPH COYLE.

Subscribed and sworn to before me this 13th day of April, A. D. 1881.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
*Ass't Clerk.*

40 *Exhibit R. C., No.* 1, *to Affidavit of Randolph Coyle, No.* 447 *of Docket of American Claims, U. S. and Mexican Claims Commission. Filed April* 13, 1881.

To the Honorable William H. Wadsworth and Don Francisco Palacio, commissioner- in the joint commission of the United States of America and the United States of Mexico:

The memorial of Benjamin Weil, residing in the city of New Orleans, State of Louisiana, United States of America.

(1.) That the claimant has a just claim against the United States of Mexico, arising from injury to his property by the authorities of that republic to the amount of three hundred and thirty-four thousand nine hundred and fifty dollars, gold currency, with interest thereon from the 20th of September, one thousand eight hundred and sixty-four, at the rate of twelve per cent. per annum, being the legal and customary rate of interest in the Republic of Mexico, where the loss occurred.

(2.) Such claim arose on or about the 20th day of September, one thousand eight hundred and sixty-four, in the territory
41 of the United States of Mexico between Piedras Negras and Laredo, etc., by reason of loss and damage suffered by the claimant by the forcible and unlawful seizure of nineteen hundred and fourteen bales of cotton—average weights of bales, five hundred pounds—or nine hundred and fifty-seven thousand pounds, of the value of thirty-five cents per pound, amounting to the said sum of three hundred and thirty-four thousand nine hundred and fifty dollars, which said cotton was, as aforesaid, unlawfully seized and taken possession of by the forces of the liberal or republican Government of Mexico, the President or chief of which was Don Benito Jaurez, which said cotton was on trains and being transported through the territory to the city of Matamoras, Mexico, and the said cotton, this claimant declares, was his individual property, and he was the sole owner thereof at the time of said seizure.

(3.) The claimant says that he then suffered loss of his said cotton of the value and to the amount of three hundred and thirty-
42 four thousand nine hundred and fifty dollars, and that no part of the same was ever returned to him or to any person for him, although he often requested and demanded the same from all persons in authority under said government that he could approach.

(4.) The said claimant says that the facts and circumstances attending the loss and injury out of which the claim arises, and the facts and circumstances upon which the claim is founded are as follows:

That in the year one thousand eight hundred and sixty-four the the said claimant was temporarily residing in the Republic of Mexico, making the city of Matamoras generally his place of residence, and was engaged in buying cotton for the purpose of exportation, and was engaged in a lawful and legitimate business, and while his cotton was *in transitu*, and at the points heretofore men-

tioned, to the city of Matamoras, it was seized by the forces of the said liberal, constitutional, or republican government of Mexico, of which Don Benito Jaurez was the president or chief, and was forcibly taken by said forces from the possession of the claimant, and the same was done under no right or claim of said gov-
43 ernment against said claimant.

(5.) The claimant says that this claim is preferred by him for and on his own behalf.

(6.) The claimant says that he was born in Bonyaritter, Bas Rhine, France, and that his present place of residence or domicil is in the city of New Orleans, State of Louisiana, United States of America, and that my home or domicile at the time of the seizure of said cotton was in the said city of New Orleans, and that I am a naturalized citizen of the United States of America, and was so at the time of the seizure of my cotton, and still am a citizen of said Government, and have never owed allegiance to any other government since I became a citizen of the Government of the United States, and I herewith file the naturalization papers showing that fact.

(7.) The claimant says the entire amount of the claim does now, and did at the time when it had its origin, belong solely and absolutely to me, and no other person is or ever has been in any way interested therein or in any part thereof.

44 (8.) The claimant says that he has not, nor any person for him, ever received any sum of money or other equivalent or indemnification for the whole or any part of the loss or injury upon which his claim is founded.

(9.) The claimant says that this claim was not presented prior to the first day of January, 1869, to the Department of State of either Government or to the minister of the United States at Mexico, or that of the Mexican Republic at Washington.

(10.) Proofs in support of said claim are filed with this memorial, and the claimant prays leave to call in and refer to any other proofs to be presented before this honorable commission in support of his said claim, and to amend or add to his said memorial or proofs, as may be deemed advisable and necessary and in accordance with the facts and evidence.

(11.) That Fouke & Key, attorneys and counsellors at law, Washington, D. C., are duly authorized to act for this claimant in relation to said claim, and John J. Key, of Washington, D. C., is his attorney-in-fact, having full authority and power thereto.

45 Wherefore the claimant respectfully asks this honorable commission to examine into the allegations and proofs in this matter, to the end that the claimant may be paid the amount of this aforesaid just claim against the United States Government of Mexico.

And this claimant will ever pray.

BENJAMIN WEIL,
By JOHN J. KEY,
*His Atto.-in-fact.*

FOUKE & KEY,
*Solicitors & Atto. for Benj. Weil.*

DISTRICT OF COLUMBIA, } ss:
*County of Washington,* }

John J. Key, being first by me duly sworn, says, on his oath, that he is attorney-in-fact of the memorialist described in the foregoing memorial; that the said memorialist is absent from the District of Columbia, and that the facts stated in said memorial are true, to the best of his knowledge, information, and belief.

JOHN J. KEY,
*Attorney-in-fact of Benj. Weil.*

46 Sworn to and subscribed before me, a notary public in and for said county and District, this twenty-fifth day of April, A. D. eighteen hundred and seventy.

[SEAL.]

N. CALLAN,
*Notary Public.*

47 EXHIBIT R. C., No. 2. *Filed April* 13, 1881.

*Memorial Annexed to Affidavit of Randolph Coyle, No.* 639, *Docket of American Claims, U. S. and Mexican Claims Commission.*

To the Honorable William H. Wadsworth and Don Francisco Gomez Palacio, commissioners appointed in the joint commission, under the treaty of July 4, 1868, between the governments of the United States of America and the United States of Mexico.

The memorial of Jonas Marks, John Marks, and Lambert B. Cain, citizens of the United States of America, residing in the city of New Orleans, State of Louisiana:

I. The claimants say that they have a just claim against the United States of Mexico, arising from injuries to their property and wrongs committed against them by authorities of the United States of Mexico, amounting to sixty-seven thousand and forty-one dollars and seventy-nine cents ($67,041.79), gold currency, with interest thereon from the 17th day of January, 1864, on fifty thousand dollars ($50,000), and on seventeen thousand and forty-one dol-

48 lars and seventy-nine cents ($17,041.79) from the 4th day of September, 1866, at the rate of twelve per cent. per annum, that being the usual and customary rate of interest at Matamoras, State of Tamaulipas, Mexico, where the loss occurred.

II. Such claim, as the claimants say, arose, as to the sum of fifty thousand dollars, on or about the 17th day of January, 1864; the sum of fifteen hundred and ninety dollars, as nearly as your claimants can state, some time in the month of June or July, 1864; the sum of five hundred and sixty-nine dollars and twenty-nine cents on the 4th of July, 1866; the sum of five hundred dollars on the 16th July, 1866; the sum of three hundred and sixty dollars on the 24th July, 1866; the sum of twenty-two dollars and fifty cents on the 27th of July, 1866; the sum of five hundred dollars on the 25th of August, 1866; the sum of five hundred dollars on the 4th of September, 1866, and the sum of thirteen thousand dollars, which were assessed at different times by the military authorities of the govern-

ment of Mexico against your claimants and paid by them, all occurred in the year 1866, and, as well as your claimants recollect and believe, occurred before the 4th September, 1866.

Your claimants say that the wrongs herein complained of occurred in the city of Matamoras, State of Tamaulipas, Mexico.

III. The claimants say that the facts and circumstances attending their loss and the wrongs and injuries committed against them by the authorities of the said government of Mexico are as follows: That your claimants were temporarily doing business under the name and style of Jonas, Marks & Co., as merchants, in the city of Matamoras, State of Tamaulipas, Mexico, in the year A. D. 1864, and were doing a large wholesale business at that time; that on or about the 17th day of January of said year a military force belonging to the liberal government of Mexico, at the head of which government Don Benito Juarez was the president or military chief, entered the warehouse of your claimants, situated in the city of Matamoras, in said State of Tamaulipas, and expelled in a violent manner and by force Lambert B. Cain, one of these claimants and a member of the firm of Jonas, Marks & Co., and the employees of said house, and took therefrom and converted the same — and wilfully destroyed goods, wares, and merchandise belonging to said claimants to the value of fifty thousand dollars, and afterwards the said authorities of the said government of Mexico compelled your claimants by force, with threats, to advance and pay over, what was termed by them forced loans, the sum of $17,041.79, as herein specifically set forth, which said actions of the authorities of the said government of Mexico were wrongful, and your claimants are entitled to the amount of their just claim as herein stated.

IV. The claimants say that this claim is preferred for and on their own behalf; that they are all naturalized citizens of the United States of America; that Jonas Marks and John Marks are natives of Eigenheim, in Germany, and that L. B. Cain is a native of France; that the said claimants are now, and were at the time this claim arose, domiciled in the city of New Orleans, State of Louisiana, and that the said Lambert B. Cain, at the time this claim arose, was temporarily residing and attending to the business of Jonas Marks & Co. in the said city of Matamoras, Mexico, and that the residence and domicile of all the claimants is now in the said city of New Orleans, and that all the said claimants were citizens of the United States when the claim arose.

The claimants say that the entire amount of the claim does now and did at the time when it had its origin belong solely and absolutely to them; that the said claimants nor any other person has ever received any sum of money or other equivalent or indemnification for the whole or any part of the loss or injury upon which the claim is founded; that said claim was not presented prior to the 1st day of February, 1869, to the Department of State of either goverment, or to the minister of the United States at Mexico or that of the Mexican Republic at Washington.

V. Proofs in support of said claim are filed with this memorial, and the claimants pray leave to call in and refer to any other proofs

to be presented before this honorable commission in support of their said claim, and to amend or add to their said memorial or
52 proofs as may be deemed advisable and necessary, and in accordance with the facts and evidence.

VI. That Philip B. Fouke, of the city of New Orleans, State of Louisiana, and John J. Key, of the city of Washington, District of Columbia, are our counsellors and attorneys at law, and that said John J. Key is our attorney-in-fact, having full power and authority in relation thereto.

Wherefore the claimants respectfully ask this honorable commission to examine into the allegations and proofs in this matter, to the end that the claimants may be paid the amount of sixty-seven thousand and forty-one dollars and seventy-nine cents, in gold, with interest thereon as claimed herein, their just claim against the United States of Mexico.

The claimants will ever pray, &c.

JONAS MARKS,
JOHN MARKS,
LAMBERT B. CAIN,
By JOHN J. KEY,
*Their Attorney-in-fact.*

FOUKE & KEY,
*Attorneys and Counsellors at Law, for Claimants.*

53 DISTRICT OF COLUMBIA, }
*County of Washington,* } *ss.*

John J. Key, being first duly sworn, says on his oath that he is attorney-in-fact of the memorialist- described in the foregoing memorial; that the said memorialist- are absent from the District of Columbia, and that the facts stated in said memorial are true to the best of his knowledge, information, and belief.

JOHN J. KEY,
*Attorney-in-fact of Jonas Marks, John Marks, and Lambert B. Cain.*

Sworn to and subscribed before me, a notary public in and for the county and District aforesaid, this twenty-ninth day of April, A. D. eighteen hundred and seventy.

N. CALLAN,
*Notary Public.*

54 A los Honorables William H. Wadsworth y Don Francisco Gomez Palacio, comisionados nombradas en la comision mista, bajo el tratado de 4 de Julio, 1868, entre los gobiernos de los Estados Unidos de America y los Estados Unidos de Mejico.

Vuestro memorialistas Jonas Marks, John Marks, y Lambert B. Cain, cindadanos de los Estados Unidos de America, residentes de la ciudad de Nueva Orleans, Estado de la Louisiana:

I. Vuestro reclamantes dicen que tienen unjusto reclamo contra los Estados Unidos de Mejico, originado por menoscabos a su propiedad, y por perjuicios acometido contra ellas, por las autoridades

de los Estados Unidos de Mejico, monta a sesenta y siete mil cuarenta y un pesos setenta y nueve centados ($67,041.79), en moneda de oro, con el equivalente interes desde el dia 17 de Enero, 1864, sobre cincuenta mil pesos, y sobre diez y siete mil cuarenta y un pesos setenta y nueve centados, desde el dia 4 de Setiembre, 1866, a razon del doce por ciento al ano, siendo este el justo y acostumbrado interes en Matamoras, Estado de Tamaulipas, Mejico, donde se ocasionaron los danos.

55 II. Esta reclamacion, dice vuestro memorialistas, origino sobre cincuenta mil pesos en los alrededores del dia 17 de Enero, 1864, sobre mil quinientos noventa pesos tan procsima como recuerda vuestro memorialistas, en el mes de Junio ° Julio, 1864; sobre la suma de quinientos sesenta y nueve pesos veinte y nueve centados el dia 4 de Julio, 1866; sobre la suma de quinientos pesos el dia 16 de Julio, 1866; sobre la suma de tres ciento sesenta pesos el dia 24 de Julio, 1866; sobre la suma de veintidos pesos cincuenta centavos el dia 27 de Julio, 1866; sobre la suma de quinientos pesos el dia 25 Agosto, 1866; sobre la suma de quinientos pesos el dia 4 Setiembre, 1866; y sobre la suma de trece mil pesos cual les ha sido forlosamente exsigido por las autoridades militares del gobierno Mejicano en varias veces, y cuales tuvieron que p. gar y los pagaron segun las dichas ecsigencias, tuvo lugar en el ano 1866; y vuestro reclamantes declaran estas ocurrencias haber tomado lugar antes del 4 de Setiembre, 1866. Vuestro reclamantes dicen que los danos y perjucios que sufeieron tuvo lugar en la ciudad de

56 Matamoras, Estado de Tamaulipas, en Mejico.

III. Vuestro memorialistas dicen, que los hechos y circumstancias que concurrieron a la perdida, y los perjucios de donde origino este reclamo, cusado por los autoridades del gobierno Mejicano, son los siguientes; que vuestro memorialistas hacian negecio mercantil temporalmente, bajo la firma y nombre de Jonas Marks y Ca., comerciantes, en la ciudad de Matamoras, Estado de Tamaulipas, en Mejico, en el ano de 1864, y que entonces hacian negocios por mayor; que a los alrededores del dia 17 de Enero del predicho ano, una fuerza militar, pertineciente al gobierno liberal de Mejico, y al mando de ellos Don Benito Juarez era el Presidente de la Republica, y Jefe de las fuerzas militares de la Republica de Mejico. Que aquella fuerza militar ante dicho entraron los almacenes de vuestro reclamante, situados en la ciudad de Matamoras, Estado de Tamaulipas, y por fuerza mayor, botaron del dicho almacen a uno de otro reclamante, L. B. Cain, miembro de la sociedad de Jonas Marks y Ca., como igualmente a los empleados de

57 dicha casa y habiendo logrado en este su procedimiento, siguieron en despojar y destruir mercancias de todas clarse y especie, pertenecientes a otro memorialistas por el valor de cincuenta mil pesos en oro, y que despues del hecho, las dichas autoridades del ante dicho Gobierno de Mejico obligaron a vuestro memorialista por medio de atintados innumerables que se presentaran y pagasen la suma de diez y siete mil cuarenta y un pesos setenta y nueve centados como arriba especificados, en various tiempos y segun las fechas senaladas, bajo el nombre de Prestamo

forzoso, cuyos actos de las autoridades del dicho gobierno de Mejico, fueron malamante hecho contra vuestro memorialista, y que de estas repetidas ocurrencies és en que se fundan este reclamo.

IV. Vuestros memorialistas dicen que este reclamo los hacen solamente en su propio interes, que todos ellos son ciudadanos por naturalizacion de los Estados Unidos de America, que Jonas Marks y John Marks fueron, nativos de Eigenheim en Alemania, que L. B. Cain, es nativo de Francia, que vuestro memorialistas son
58 ahora y eran en el tiempo de la ocurrencia de que se origino este reclamo, domiciliados en la ciudad de Neuva Orleans, Estado de Louisiana, y que el ante dicho L. B. Cain cuando dicha occurrencia residia temporalmente, dando sus atenciones mercantiles a la casa de Jonas Marks y Ca., en la dicha ciudad de Matamoras, Mejico, y que la verdadera residencia y domicilio de todos otro reclamante es ahora y era entonces en la ciudad de Neuva Orleans, y que todos ellos eran y son actualmente ciudadanos de los Estados Unidos de America.

Ademas dicen que la entera totalidad del reclamo es ahora y cuando se origino, pertenencia sola y absoluta suyas, y que vuestro reclamantes ni ninguna otra persona ha recibido ninguna sume de dinero u otro equivalente o indemnizacion, en parte o en todo por lás perdidas en que se funda este reclamo. Los reclamantes dicen que este reclamono se presento antes del dia 1 de Febrero, 1869, al departmento de estado de ninguno de los gobiernos, ni al ministro de los Estados Unidos en Mejico, ni al de la Republica Mejicana en Washington.

59 V. Pruebas en apoyo de este reclamo se encontraran en los legajos que acompanan al memorial, y vuestro reclamantes piden se la conalda permiso para hacer referencia a otras pruebas que se presentaran a esta honorable comision, afin de dar mas fuerza y validez a su dicho reclamo, como tambien para enmendar o agregar al dicho memorial y pruebas, como mas le convenga y sea necessario para dar luz de acuerdo con los hechos y evidencias.

VI. Que Philip B. Fouke, de la ciudad de Nueva Orleans, Estado de la Louisiana, y que Juan J. Key, de la ciudad de Washington, Distrito de Colombia, son sus apoderados y que Juan J. Key, es su apoderado de hecho y derecho, teniendo pleno poder y autoridad en lo que concerne al dicho reclamo.

Por lo tanto los demandantes respetuos-amente suplican a esta honorable comision que ecsamine los alegatos y pruebas sobre este asunto, con fin de que se les pueda pagar a vuestro memorialistas la suma de sesenta y siete mil curanta y un pesos setenta y nueve centados, con su correspondiente interes, siendo este el mon-
60 tante de nuestro justo reclamo contra el Gobierno de los Estados Unidos de Mejico.

JONAS MARKS.
JOHN MARKS.
L. B. CAIN.
JUAN J. KEY,
*Apoderado de Hecho.*

FOUKE & KEY,
*Apoderados por Reclamantes.*

DISTRITO DE COLOMBIA, } ss:
*Condado de Washington,* }

Juan J. Key, siendo por mi primeramente juramentado, dice a cargo de su juramento, que el es apoderado de los memorialistas indicados en el precedente memorial, que los dichos memorialistas se encuentran ansente del Distrito de Colombia, y que las materias de hecho manifestados en el dicho memorial son verdaderos segun lo mejor de su saber, informacion y creencia.

JOHN J. KEY,
*Apoderado de Hecho de Jonas Marks,*
*John Marks, y Lambert B. Cain.*

Jurado y firmado ante mi, escribano publico en y por dicho condado y Distrito, hoy 27 de Abril, 1870.

[L. S.]

N. CALLAN,
*Notario Publico.*

61 *Order Appointing Special Marshal to Serve Subpœna to Answer. Filed April* 13, 1881.

In the Supreme Court of the District of Columbia, this 13th day of April, 1881.

HENRY E. DAVIS, Ad'r, }
*vs.* } Eq. 7674.
JOHN J. KEY. }

Upon application of the complainant, Thomas B. Stahl is hereby appointed by the court, in accordance with equity rule No. 11, to serve the subpœna *to* the defendant to answer the original bill in the above-entitled cause this day filed.

By the court:

A. WYLIE.

62 *Subpœna to Answer. Issued April* 13, 1881.

In the Supreme Court of the District of Columbia.

HENRY E. DAVIS, Adm'r *d. b. n.*, &c., Complainant, } No. 7674.
*against* } Equity
J. J. KEY, Defendant. } Docket 21.

APRIL 13, 1881.

The President of the United States to John J. Key:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the original bill under pain of attachment and such other process of contempt as the court shall award.

R. J. MEIGS, *Clerk,*
By R. J. MEIGS,
*Ass't Cl'k.*

Witness:
D. K. CARTTER, *Chief Justice.*

63 *Return of Subpœna to Answer.* 1881, *April* 13.

Thos. P. Stahl makes oath that he served on defendant by delivering to him in person *of* a copy of this subpœna to answer.

THOS B. STAHL.

*From Rule of Practice of Sup. C't D. C. Ed. Promulgated June* 22, 1875.

Rule 64, 1st paragraph:

Answer.—If the complainant, in his bill, waive an answer under oath, or only require an answer under oath to certain specified paragraphs of his bill, the answer of the defendant, though under oath, except such parts of it as shall be directly responsive to such paragraph, shall not be evidence in his favor unless the cause be set down, and bill and answer only, but may, nevertheless, be used as an affidavit, with the same effect as heretofore, on motion to grant or dismiss an injunction or any other incidental motion in the cause; but this shall not prevent a defendant from being a witness in his own behalf under section 3 of the act of Congress of July 2, 1864, 13 Stat-es, 374 (Feb'y 15, 1873, 2 General Term Minutes, 142).

64 *Answer of Defendant. Filed June* 7, 1881.

In the Supreme Court of the District of Columbia, the 6th day of June, 1881. In Equity.

HENRY DAVIS, Administrator *d. b. n.* of Philip B. Fouke, Deceased, Complainant,
*vs.*
JOHN J. KEY, Defendant.
} No. 7674.

The answer of the defendant, John J. Key, to the bill of complaint of the above-named complainant.

In answer to the said bill of complaint, this respondent says as follows:

First. This respondent admits the truth of the averments contained in the first paragraph of the said bill of complaint.

Second. This respondent admits the truth of the averments contained in the third paragraph of the said bill of complaint.

Third. This respondent admits the substantian correctness of the averments contained in the third paragraph of the said bill
65 of complaint as to the several conventions and the proceedings of the commission therein mentioned, but, for greater certainty, he refers to the said conventions and to the said proceedings themselves.

Fourth. This respondent admits the substantial correctness of the averments contained in the fourth paragraph of the said bill of complaint, but, for greater certainty, this respondent refers to the original articles of copartnership, whereof the certain exhibit marked "A," and filed with the said bill of complaint, purports to be a copy.

Fifth. This respondent admits that on the twenty-fourth day of September, 1869, this respondent and the intestate of the

complainant entered into certain articles of copartnership of the tenor and effect, in substance, set forth in the certain exhibit marked "B," and filed with the said bill of complaint, but, for greater certainty, this respondent refers to the original of the said articles of copartnership; but this respondent expressly denies that this respondent and the intestate of the complainant ever in fact entered upon or followed he practice of law at the
66 said city of Washington or elsewhere, as copartners, by virtue of or under the said articles of copartnership last above mentioned. This respondent avers that there was filed in this court, by the present complainant, against this respondent and divers other persons as defendants, in the month of January, 1881, an original bill in a certain cause numbered in equity No. 7587, and in the next following month an original bill in a certain cause numbered in equity No. 7595, wherein there was sought and capable of being obtained, as against this respondent, in substance, the identical relief sought to be secured against him under the present bill, and, in substance, for the identical causes therein set forth; that this repondent at large answered the said two bills of complaint in the months of January and February last, wherein they were filed, and, in such his answers, gave a full, particular, and truthful account and disclosure of all his relations with the intestate of the complainant, and that, after this respondent had so answered the said two bills of complaint, the complainant, without previ-
67 ous notice to this respondent, procured them to be severally dismissed without prejudice, and this respondent avers that it appeared, in substance, in his said answers, and the truth was, and it was well and fully known to the complainant at and before the filing of the present bill of complaint, that this respondent and the intestate of the complainant had never entered upon or followed the practice of law at the said city of Washington or elsewhere, as copartners, under or by virtue of the said articles of copartnership bearing date of the twenty-fourth day of September, 1869; and this respondent avers the truth touching the copartnership formed under the said articles of agreement and the relations existing between this respondent and the intestate of the complainant in his lifetime to be as follows: On August 10th, 1867, and while this respondent, then an attorney and counsellor of law, was residing and practicing his profession at the city of Terre Haute, in the State of Indiana, he entered into certain articles of copartnership with one De Castro and one Hays, then in his lifetime, both residing at the city of New Or-
68 leans, in the State of Louisiana and with the intestate of the complainant, who was then either transiently or permanently residing at the said city of Terra Haute, in the State of Indiana. This copartnership related exclusively to the prosecution of claims before the said commission, and constituted, as this respondent avers, the single and exclusive copartnership relation in respect to the prosecution of this description of claims, that was at any time existing between this respondent and the intestate of the complainant. Under the said articles of copartnership this respondent was to reside and remain in the said city of Washington. His copartners were

to procure the claims and send them, with suitable powers of attorney from the claimants, to this respondent, at the said city of Washington, and to attend to the taking of evidence in the said city of New Orleans, in Mexico, and at such other places as occasion might require. The compensation to be earned by the firm thus created was to be divided and shared one-half (½) to this respondent and the residue between the said De Castro, the said Hays, and
69 the intestate of the complainant.

On September 24th, 1869, a separate and independent copartnership was formed between this respondent and the intestate of the complainant alone, under the terms and conditions set forth in the original articles of copartnership, whereof a substantial copy is filed with the original bill in this cause and marked Exhibit "B." The copartnership thus established between this respondent and the intestate of the complainant was to continue in force for the space of two years, or until the 24th day of September, 1871, unless sooner dissolved by mutual consent.

It contemplated the general practice of the law, except in respect to the prosecution of claims before the said commission, by both parties in person at the said city of Washington, and upon terms of mutual equality as to profit and loss, and this equality was so extended as to include, not only the earnings of the new firm, but such compensation as might also be received either by this respondent or by the intestate of the complainant, in their individual capa-
70 city from the prosecution of any claims before the said commission under the elder copartnership formed between this respondent, the said De Castro, the said Hays, and the intestate of the complainant.

This respondent, as contemplated in both of the said articles of copartnership, about the month of November, 1869, removed to the said city of Washington, and, in view of his separate copartnership relations with the intestate of the complainant, there opened an office and put up the sign of Fouke and Key, attorneys-at-law.

After the formation of the said separate copartnership between the intestate of the complainant and this respondent the intestate of the complainant left the said city of Terre Haute and went, with the view of arranging his personal business, to the said city of New Orleans before taking up his residence and entering upon the practice of the law with this respondent at the said city of Washington; but thereafter, and as this respondent now remembers, some time either in the month of January or in the month of February, in the year 1870, the intestate of the complainant made his appear-
71 ance at the said city of Washington, and then and there informed this respondent that it was the expectation and desire of him, the intestate of the complainant, to receive the appointment of public administrator for the parish of Orleans, in the said State of Louisiana; that the emoluments of the said office were of great pecuniary value; that if he, the intestate of the complainant, succeeded in obtaining the said appointment he would be obliged to remain in the said city of New Orleans and to renounce his intention of residing at the said city of Washington and there in person practicing law

as the copartner of this respondent, and that, whilst such the residence of the intestate of the complainant at New Orleans aforesaid would involve no charge in the terms of the first and elder copartnership formed between the respondent and the intestate of the complainant, together with the said De Castro and the said Hays, it must, nevertheless, of necessity cancel and alter the terms of the second and subsequent copartnership formed directly between
72 this respondent and the intestate of the complainant above.

And thereupon it was mutually and by words agreed by and between this respondent and the intestate of the complainant, then in his lifetime, that while there should be no change or alteration in their relations under the copartnership which had been formed by this respondent and the intestate of the complainant in conjunction with the said De Castro and the said Hays, yet, in case the said appointment should be so obtained and received by the intestate of the complainant, that the articles of copartners- then existing directly between this respondent and the intestate of the complainant alone should, as would also by law be implied in the premises, be vacated and dissolved, and that in lieu thereof this respondent and the said Fouke should be associated in business and act together in the manner and upon the terms and conditions following, to wit: that the intestate of the complainant, at New Orleans aforesaid, should procure himself to *the* employed as attorney in such claim
73 (expressly, except, nevertheless, claims arising or to arise before the said commission) requiring adjustment, at the said city of Washington, as he might be able, and send the said claims to this respondent, at the said city of Washington, for prosecution by this respondent before the proper tribunals or authorities thereat, and that any compensation that should be earned by this respondent and the said Fouke, in the prosecution of any such claims so sent to the respondent directly by the intestate of the complainant should be equally divided and shared between them; and this respondent avers that thereupon, after the making of this new verbal agreement between this respondent and the intestate of the complainant, the latter returned to the said city of New Orleans, and there, on the 2d day of April, 1870, in fact received the said appointment and continued to hold and enjoy the same and to dwell and reside at the said city of New Orleans until some time in the summer of the year of 1873, and long after the period prescribed of the termination of the said articles of copartnership, bearing date
74 of the 24th day of September, 1869.

Under this last and verbal agreement and association between this respondent and the intestate of the complainant the latter, whilst residing at New Orleans aforesaid, and between the year- 1870 & '73, did procure himself to be appointed the attorney of divers claims against the United States, and did send to this respondent, at the city of Washington, divers claims to be there prosecuted, and which were, in fact, by this respondent faithfully and diligently prosecuted, before Congress, the various executive departments, and the tribunal known as the Southern Claims Commission, but of all of these claims so transmitted, as forwarded to this re-

spondent by the intestate of the complainant, from New Orleans aforesaid, and so prosecuted by this respondent, one only was ultimately rewarded with success or yielded (with the exception of a single case involving one hundred dollars) any pecuniary profit whatsoever, either to the claimant or to his attorney or attorneys, to wit, the claim of one Pike for relief before Congress, in respect
75 of which said claim the whole compensation, amounting to about three thousand dollars, was paid into the intestate of the complainant exclusively, who never thereafter in his lifetime, in respect of the said compensation, or any part thereof, in any manner accounted to or with this respondent.

Some time in the year 1873, after the period assigned for the termination of the copartnership created by the said articles of copartnership, bearing date on the 24th day of September, 1869, and after he had ceased to be public administrator as aforesaid, the intestate of the complainant left the said city of New Orleans and came to the said city of Washington. Divers of the said claims, which had been sent as aforesaid to this respondent from the said city of New Orleans by the intestate of the complainant, were then pending and undetermined, and, although the intestate of the complainant had not so left the said city of New Orleans with a view of promoting, or by reason of any reference to, any copartnership business or relations then existing between this respondent and the intestate of the com-
76 plainant, it was, nevertheless, shortly after such the arrival and reappearance of the intestate of the complainant at the said city of Washington, agreed between this respondent and the intestate of the complainant that the latter should occupy, without cost or charge, a portion of the law office of this respondent in the said city of Washington (whereat still remained the old firm sign of Fouke and Key), and should aid and assist this respondent in the further prosecution of such of the said claims as aforesaid to this respondent sent from the said city of New Orleans by the intestate of the complainant as were still pending and undetermined, and that in respect of any new and independent business wherein they might think it needful or convenient to be mutually engaged or united compensation should in each case be equally divided and shared between them.

Thereafter the *interest* of the complainant, on his own sole and exclusive account, took and prosecuted many claims before the said tribunals without engaging or uniting this respondent therein
77 and without sharing with this respondent any portion of the compensation awarded or derived by the intestate of the complainant from the prosecution of such claims, and this respondent expressly and solemnly declares and avers that of all such business, claims, cases, matters, and transactions that this respondent and the intestate of the complainant were as aforesaid mutually or together engaged or united in or in anywise connected with only two cases yielded any manner of compensation or recompense by way of fee or retainer, and that in one of such cases the entire compensation allowed and paid was appropriated by the intestate of the complainant to his own exclusive use and benefit, and that in the other the

compensation was fairly and equally divided by and between the intestate of the complainant and his respondent.

And this respondent expressly and solemnly declares that the intestate of the complainant never in his lifetime claimed, asserted, pretended, suggested, or intimated that any other connection
78 or relation in business, copartnership or otherwise, ever existed between the intestate of the complainant and this respondent, or was ever designed or intended by them or either of them.

Sixth. This respondent admits the substantial correctness of the amounts contained in the sixth paragraph of the said bill of complaint, save and except as to the particulars following, to wit: The said claim mentioned in the said paragraph was allowed by the umpire of the said commission on the first day of October, 1875, and save and except that from the gross amount allowed upon the said claim by the said commission, to wit, the sum of four hundred and eighty-seven thousand eight hundred and ten dollars and sixty-eight cents ($487,810.68), there has been withheld and deducted by the Government of the United States (on account of expenses incurred in respect to the said commission) the sum of twenty thousand three hundred and ninety dollars and forty-eight cents ($20,390.48), and that there remains yet to be paid and distributed in respect of
79 the award made upon the said claim, not the sum of three hundred and fifteen thousand nine hundred and twenty-one dollars and four cents ($315,921.04), as in the said sixth paragraph of the said bill of complaint set forth, but only the sum of two hundred and ninety-five thousand five hundred and thirty dollars and fifty-six cents ($295,530.56).

Seventh. This respondent admits that in accordance with the terms of the said articles of copartnership bearing date of the 10th August, 1869, the said claim of the said Weil was procured by the intestate of the complainant in conjunction with the said Hays and the said De Castro, and that they attended under the requirements of the same articles of copartnership to taking the necessary proof in relation to the said claim, and sent the same to this respondent at Washington, accompanied with a power of attorney from the said Weil authorizing this respondent to prosecute the said claim
80 before the said commission; but this respondent denies that the said claim was in any manner or under any contract or engagement, or otherwise, prosecuted before the said commission by any person but by this respondent alone. This respondent admits, however, that the said W. W. Boyce, though he took no part in the active prosecution of the said claim before the said commission, was, in the progress of the said claim, consulted and gave valuable advice as counsel. This respondent admits, also, that a preliminary statement of the said claim was, on the 12th day of March, in the year 1870, presented to the said commission in the name of the intestate of the complainant, as well as of this respondent, as counsel for the claimant, but this respondent avers that the said claim was so presented to the said commission before the intestate of the complainant had received, or had become assured of receiving, the

appointment of public administrator aforesaid, and before the co-
partnership formed between this respondent and the intestate
81 of the complainant, on the 24th day of September, 1869, had,
by reason of the acceptance by the latter of such appoint-
ment, become vacated and dissolved, as hereinbefore set forth.

This respondent further says that thereafter he prepared written and printed memorials, setting forth in a more formal manner the particulars and *not one* of the said claim, and on the 27th day of April, 1870, prevented the said memorials unto the said commission. And this respondent believes it to be true that to the said memorials, in some part thereof, he set the name of Fouke & Key, as solicitors of the said claimants. But this respondent avers that at the time of the preparation of the said memorials, as well as at the time of their presentation to the said commission, he was, and for some time thereafter remained, entirely ignorant of the fact that on the 2d day of April, 1870, the intestate of the complainant had received the said appointment of public administrator, and that the copart-
nership formed and contemplated between them under the
82 said articles, bearing date on the 24th day of September, 1869,
would require a dissolution.

Eighth. This respondent admits the averments contained in the eighth paragraph of the said bill of complaint.

Ninth. This respondent admits the execution by the parties thereto of the agreement bearing date on the 5th day of November, 1879, and that a substantial copy thereof is set forth in the Exhibit marked "C" filed with the said bill of complaint, but for greater certainty this respondent refers to the original of the said agreement.

This respondent expressly denies, however, that it was either the purpose or the effect of the said agreement to fix or adjust the fees or allowances of the parties thereto merely as against the said Weil or his representatives or his estate, or merely in conformity with the said articles of copartnership made on the 10th day of August, 1869.

This respondent avers, on the contrary, that it was the ex-
83 press purpose and design of all of the parties to the said agree-
ment, bearing date of the 5th November, 1875, to definitely ascertain and finally settle and adjust, by means of the said agree-ment, *hath* amongst themselves and as between the said Cain, as attorney-in-fact for Alice Weil, personally, and as curatrix of her deceased husband, on the one hand, and all the other parties to the said agreement on the other hand, the rights and interests of all the parties to the said agreement in and to the proceeds of the said award; that the intestate of the complainant *were* both active and urgent in procuring the making and execution of the said agree-ment, and that he personally solicited and requested this respondent to frame and draw the said agreement in order to and in advance of its execution by all of the persons therein named as parties thereto for the express purpose and design aforesaid; and this respondent avers that after the execution thereof the said agreement was uni-
formly accepted, received, and acknowledged by the intestate
84 of the complainant, in his lifetime, as a full, complete, and
final determination and settlement of the true nature and ex-

tent of the entire claim and interest of the intestate of the complainant to and in the proceeds of the said award and upon the said agreement as the act and deed, in his lifetime, of the intestate of the complainant, this respondent now especially insists and relies.

Tenth. This respondent admits the truth of the averments contained in the tenth paragraph of the said bill of complaint, save and except as now specially set forth; this respondent says that he procured from the said Cain the certain conveyance and assignment bearing date on the 23d day of June, 1880, and in the tenth paragraph of the said bill of complaint mentioned, in order to still further secure and maintain his rights as recognized and defined in the said agreement bearing date on the 5th day of November, 1875, to avoid complication with any other person or persons claiming an interest of the proceeds of said award, and to secure to himself, as far as
85 might be practicable, full and exclusive control over the separate, distinct, and independent interest on the said award, which by the said agreement of November 5th, 1875, had been recognized and established in his favor; and that this respondent, for his further security in the premises, caused the conveyance and assignment so made on or — the 25th day of June, 1880, to be filed in the State Department; and this respondent says that the proportion of the paid instalment of the said award that has by him been collected and received was so collected and received, not exclusively under or by virtue of the said conveyance and assignment made on the 23d day of June, 1880, but also under and by virtue of the said agreement made on the 5th day of November, 1875, and whereof the said conveyance and assignment of the 23d of June, 1880, was declaratory and confirmatory.

Eleventh. This respondent knows and can set forth nothing touching the averments contained in the eleventh paragraph of the said bill of complaint, save and except that this respondent has
86 been informed, & believes it to be true, that the complainant, in right of his intestate, has received a proportionate share of the $8\frac{1}{3}$ per cent. of the five instalments paid under the said award.

This respondent denies that there is any matter, transaction, or thing for which he should in equity and good conscience account to the complainant, and this respondent repudiates and declines the offer of the complainant made in the 11th paragraph of the said bill of complaint.

Twelfth. This respondent admits the presentation to the said commission of the claim of Jonas Marks & Co., but this respondent utterly denies that the intestate of the complainant, in his lifetime, and this respondent were employed, or did ever unite, as or in the relation of copartners to prosecute the said claim before the said commission or otherwise, except as now especially set forth.

This respondent avers that under the articles of copartnership executed between the said De Castro, the said Hays,
87 and the intestate of the complainant and this respondent, on the 10th Aug., 1869, the said claim of Jonas Marks & Co., made by the said De Castro, Hays, and the intestate

of the complainant, sent from New Orleans aforesaid to this respondent, at the said city of Washington, together with a power of attorney, as this respondent now remembers, to himself alone, for the prosecution of the said claim, and that the compensation secured to be paid under said power of attorney to this respondent by the said Jonas Marks and Co. was forty per centum of the amount that might be awarded by the said commission in respect to the said claim. This respondent avers that he alone prosecuted before the said commission the said claim, but, as this respondent freely admits, the said De Castro, Hays, and the intestate of the complainant rendered valuable services in respect to the allowance of the said claim by procuring and sending to this respondent, at the said city of Washington, in pursuance of and as contemplated by me, said articles of copartnership, bearing date August 10th, 1869, certain evidence needful for the due and successful pros-
88 ecution of the said claim before the said commission. This respondent believes it to be true also that upon the said claim the said commission awarded to the said Jonas Marks & Co. the sum of $52,581.37; but this respondent avers that some time in the year 1876, and after the allowance of the said award by the said commission to the said Jonas Marks & Co., the intestate of the complainant in person applied and made overtures to this respondent to purchase of him, the said respondent (the intestate of the complainant, representinn himself to this respondent at the time as the attorney-in-fact of the said Cain in the premises), the individual and personal interest which, by reason of his services in the prosecution of the said claim, this respondent might have or enjoy in respect of the said award; that the said Fouke, the intestate of the complainant, at the same time, in person, represented to this respondent that the purchase thus proposed on behalf of the said Cain was designed to be made for the benefit of the said firm of Jonas Marks & Co., of which said firm the said Cain was then a member;
89 that the said Cain would pay unto this repondent for such his personal and individual interest in the said award the sum of $3,600 or thereabouts; that of this proposed the intestate of the complainant strongly urged the acceptance by this respondent, and that the intestate of the complainant then and there, in person, assured this respondent that he, the intestate of the complainant, in respect of his own interest in the said award, had concluded with the said Cain a separate, and distinct, and satisfactory arrangement, and this respondent avers that he did, with the full knowledge and approval of the intestate of the complainant in his lifetime, accept from the said Cain the said sum of $3,600, or thereabouts, and in consideration thereof surrendered all his individual and personal interests in the said award unto the said Cain for the benefit of said Jonas Marks & Co., of which said firm was and had long before been a member; and this respondent, upon information and belief,
90 avers that for and in respect for such interest as the intestate of the complainant had in the said award in his lifetime, he was therefor fully satisfied previous to his death by the said Cain; and this respondent expressly avers that the intestate of the com-

plainant never, in his lifetime, after the acceptance by this respondent of the said sum of $3,600, or thereabouts, as aforesaid, from the said Cain, claimed, asserted, pretended, or suggested that he, the intestate of the complainant, was in any manner interested, entitled, or concerned to or with any part of the said sum of money thus, at his instance and request, paid to this respondent by the said Cain.

And this respondent admits that he also presented to, and prosecuted before, the said commission certain other claims, upon which awards were allowed by the said commission, to the aggregate amount of about $89,638.96, and that this respondent has received and collected, and will hereafter further receive and collect, certain shares as his compensation for the prosecution of the said
91 claims; but this respondent utterly denies that this respondent, under and by virtue of the said articles of copartnership, bearing date of the 24th day of September, 1869, or otherwise howsoever, became or was liable to account to the intestate of the complainants, in his lifetime, or to the complainant as his personal representatives, after his death, in respect of any monies received, or to be received by this respondent from the awards made upon any of the said claims.

And this respondent avers that, without any connection or relation with the intestate of the complainant in his lifetime or with the said De Castro or the said Hays, this respondent, either alone or in conjunction with various other and different attorneys, who were and are strangers in name and relation to all of the persons mentioned in the said bill of complaint, prosecuted and was alone entitled to receive payment for the prosecution of the said claims; and this respondent expressly avers and solemnly declares that the intestate of the complainant never in his lifetime claimed, asserted, pretended, conceived, or imagined that he was in anywise
92 identified, related, interested, or concerned in any of the said claims or in respect of any award that might be made upon any of the said claims.

Thirteenth. This respondent expressly denies that there were conducted, managed, or prosecuted by the intestate of the complainant in his lifetime and this respondent any causes, matters, or business whatsoever pertaining to the profession of the law and within the scope and intent and meaning of the said articles of copartnership bearing date of the 24th day of September, 1869, except as already hereinbefore particularly explained; and this respondent avers that, except as hereinbefore particularly stated, there was no causes, matter, or business at any time existing between the intestate of the complainant and this respondent.

Fourteenth. This respondent admits the substantial correctness of the averments contained in the fourteenth paragraph of the said bill of complaint.

93 Fifteenth. This respondent avers that the copartnership contemplated and formed by the said articles bearing date on the 24th day of September, 1869, was shortly after the execution thereof abandoned and dissolved, as hereinbefore particularly set forth, by mutual consent of the parties thereto and also by opera-

tion of law by the acceptance — the intestate of the complainant of the said appointment as public administration at New Orleans aforesaid, and his continual residence at the said city of New Orleans, and his abandonment of and renunciation of all attention to the business contemplated by said articles during the whole of the period prescribed for the continuance of the said copartnership and for about two (2) years thereafter. This respondent utterly denies that he never accounted to or with the intestate of the complainant in his lifetime for any share or interest of the latter in any dealings or transactions of any copartnership that existed between them. This respondent positively and solemnly avers that, though the intestate of the complainant had not in some
94 respects duly accounted in his lifetime to this respondent for monies by the intestate of the complainant received, and in which this respondent was entitled to share, this respondent, long before the death of the intestate of the complainant, fully, fairly, completely, and finally settled with the intestate of the complainant in respect of every matter, business, thing, or transaction for which this respondent was in any respect or was ever by the intestate of the complainant in his lifetime deemed or convinced to be liable, and that at the time of the death of the intestate of the complainant there was nothing on the part of this respondent unadjusted or unsettled betweed this respondent and the intestate of the complainant.

This respondent admits that he did not account to the intestate of the complainant in his lifetime, and that he has not accounted to his personal representatives since his death, and this respondent utterly denies that he was or is in equity or good conscience under any obligation so to account for any monies by him received
95 in respect of the said claim of the said Weil or of the said claim of the said Jonas Marks & Co., or of any of the claims specially or generally in the said bill of complaint referred to, except as hereinbefore explained.

Sixteenth. This respondent admits that the averments contained in the sixteenth paragraph of the said bill of complaint touching the real & personal estate of this respondent are substantially true, but this respondent expressly denies that by any action done or meditated on the part of this respondent the estate represented by the complainant is threatened with irreparable injury or with any injury whatever, or that there exists any ground or reason in equity or good conscience to enjoin this defendant or for the appointment of a receiver, as in the said sixteenth paragraph of the said bill of complaint alleged and asserted; and this respondent avers that the said bills of complaint filed by the present complainant in said causes num-
95½ bered in equity 7587 and in equity number 7595 (the records of which said cause this respondent craves leave to read and refer to as part of this his answer) were inconsistant with each other and inconsistant with the present bill of complaint, in many particulars touching the rights, relations, and transactions of this respondent and the intestate of the complainant; that the complainant has no personal knowledge of any of the materical matters asserted against this

respondent in the present bill of complaint; that up to the time of his decease the intestate of the complainant never pretended or imagined, and that he would not, if now living, pretend, that any unsettled claim or account, business or matter existed between the intestate of the complainant and this respondent so far *for the* as concerns the acts of this *this* respondent; and this respondent, having fully answered prays leave to be hence dismissed, &c.

JOHN J. KEY.

I do solemnly swear that I have read over the above answer by me subscribed, and know the contents thereof; that the facts
96 therein stated upon my information and belief I believe to be true.

JOHN J. KEY.

DISTRICT OF COLUMBIA, } *sct:*
*Washington County,* }

This day, the 6th June, 1881, appeared John J. Key, who- signatures are affixed to this foregoing instrument of writing, and he made oath to the same according to him given under my hand and official seal.

[L. S.]

N. CALLAN,
*Notary Public.*

JOHN SELDEN,
*Sol. for Def't.*

97 *Replication. Filed June* 16, 1881.

In the Supreme Court of the District of Columbia this 16th day of June, 1881.

HENRY E. DAVIS, A'd'r, } Eq. No. 7674.
*vs.*
JOHN J. KEY. }

The complainant hereby joins issue with the defendant.

H. E. DAVIS, *P. P.*

98 *Motion by Defendant to Speed Cause. Filed Dec.* 26, 1882.

In the Supreme Court of the District of Columbia the 26th day of December, 1882. In Equity.

HENRY E. DAVIS, Adm'r, &c., Complainant, } No. 7674.
*v.*
JOHN J. KEY, Defendant. }

And now comes the defendant, John J. Key, through his solicitor herein, and moves the court either to dismiss the bill of the complainant for want of prosecution, or to assign a period for the taking and completion of evidence in this cause.

JOHN J. KEY,
By JOHN SELDEN,
*His Solicitor.*

99 *Order on Complainant to Complete Proof in 30 days. Filed Dec. 26, 1882.*

In the Supreme Court of the District of Columbia. In Equity.

HENRY E. DAVIS, Adm'r,
*ag'st*
JOHN J. KEY. } No. 7674.

On motion of the defendant, by his solicitor, it is, this 26th day of December, 1882, ordered that the complainant take and complete his testimony-in-chief within thirty (30) days from the date hereof.

A. B. HAGNER,
*Ass. Justice.*

100 *Stipulation of Solicitors as to Taking De Castro's Deposition. Filed Feb'y 7, 1883.*

In the Supreme Court of the District of Columbia.

HENRY E. DAVIS, Ad'r *d. b. n.* of Philip B. Fouke, Dec'd, Complainant,
*ag'st*
JOHN J. KEY, Defendant. } Eq. No. 7674.

It is hereby, this — day of February, 1883, stipulated and agreed by and between the complainant and the defendant in the above-entitled cause that Uldrick H. McLaws, of Savannah, Georgia (or, in his absence, any other officer authorized to administer oaths or take acknowledgments in the said city), be, and he hereby is, authorized to take and to transmit to the clerk of the said supreme court of the District of Columbia the deposition of Jacob O. De Castro, on the interrogatories and cross-interrogatories hereto annexed; the said deposition of Jacob O. De Castro to be read as evidence at
101 the hearing of the said cause (subject to all legal objections), and to be entitled as such to the same weight, consideration, and vigor as though the same were taken before an examiner of the said court in the said District of Columbia, and within the period limited by order of the court of the 26th day of December, 1882, for the taking by the complainant of his testimony-in-chief, and the said deposition to be taken and fully completed, and to be returned into this court on or before the fifteenth day of February, 1883.

HENRY E. DAVIS,
*Complainant.*
JOHN SELDEN,
*Sol. for Def't.*

102 *Interrogatories — Behalf C'mpl't.*

In the Supreme Court of the District of Columbia.

H. E. DAVIS, Ad'r *d. b. n.* of Philip B. Fouke, Dec'd, Complainant, *ag'st* JOHN J. KEY, Defendant. } Eq. No. 7674.

Interrogatories to be propounded in behalf of the complainant in the above-entitled cause to Jacob O. De Castro, in accordance with the stipulation and agreement hereto annexed.

1. State your name, age, residence, and occupation.

2. Do you know John J. Key, the defendant in the above-entitled cause; if yes, how long have you known him?

3. Did you, in his lifetime, know Philip B. Fouke, the intestate of the complainant in the above-entitled cause; if yes, how long did you know him?

4. State fully and precisely in what occupation or employment you were engaged between the 10th day of August, 1869,
103 and the 20th day of November, 1876.

5. Look at the following paper, marked Exhibit J. O. De C. No. 1, and state (*a*) what it is; and (*b*) whether you are the J. O. De Castro therein mentioned.

EXHIBIT J. O. DE C., NO. 1.

Articles of copartnership entered into between John J. Key, of the city of Terre Haute, State of Indiana; Philip B. Fouke, now of the city ofNew Orleans, State of Louisiana; H. T. Hays and J. O. De Castro, both of the city of New Orleans, State of La.

It is agreed between said parties that a copartnership is this day formed between them for the purpose of prosecuting claims in behalf of the citizens of the United States of America against the Government of Mexico, and of citizens of the government of Mexico against the Government of the United States of America;

It is agreed between said parties that the said Fouke, Hays, and De Castro shall procure claims of citizens of the respective
104 governments named against the other, and attend to taking the necessary proof, and that the said claim shall be sent to said Key at Washington city, accompanied with a power of attorney from the claimant authorizing said Key to prosecute said claims, and authorizing him to receive from said governments any and all amounts that may be due and coming to them.

That said Key shall retain all fees as agreed on by said parties, and shall pay over to said parties, acting in the capacity of special attorneys for that purpose of the claimant, the amount due to them as such special attorneys, both for the amount awarded the claimant and for fees due Hays, Fouke, and De Castro in the case, either at Washington, New York, or New Orleans, as he may be directed from time to time by either Hays, Fouke, or De Castro, acting as the

special agent of the claimant, whose power as such in all cases sent by them is to all intents and purposes recognized by the parties to this contract.

That said Key shall retain in all cases, when no special
105 direction is given, the portion due to said firm, paying over to the other parties at once or accounting in such manner as they may from time to time direct for the proportion of the fees so retained.

It is agreed that all fees received under this copartnership shall be divided one-half part to said Key, the other half part to said Fouke, Hays, and De Castro.

Said Key is to remain at Washington city, said Hays at New Orleans, said De Castro to be in the city of Mexico, and said Fouke is to render his services wherever they shall be needed.

In witness whereof we have hereunto set our hands and seals this tenth day of August, 1869.

(Signed)

| | |
|---|---|
| JOHN J. KEY. | [SEAL.] |
| P. B. FOUKE. | [SEAL.] |
| HARRY T. HAYS. | [SEAL.] |
| J. O. DE CASTRO. | [SEAL.] |

6. If, in answering the last interrogatory, you shall have stated that the paper, Exhibit J. O. De C., No. 1, is a copy, substantially or exactly, of articles of copartnership to which you were party,
106 state whether, in pursuance of such articles of copartnership and the agreement evidenced thereby, you engaged with the other parties therein named in procuring or prosecuting claims before the late joint commission created by convention of the 4th day of July, 1868, between the United States and Mexico, for the adjudication of all claims of citizens of either of the said countries against the government of the other, arising out of transactions of a date subsequent to the 2nd day of February, 1848; and, if yea, state (*a*) when, (*b*) under what circumstances, and (*c*) on what terms you became so engaged, and (*d*) how long you so continued.

7. If, in answering the last interrogatory, you shall have stated that, in pursuance of the agreement evidenced by articles of which Exhibit J. O. De C., No. 1, is a copy, you were engaged as in the said interrogatory asked, state whether Fouke, Key, Hays, and yourself were engaged or interested in the procurement or prosecution before the above-described commission of the claim of Ben-
107 jamin Weil against Mexico, No. 447 on the American docket, so called, of the said commission, and the claim of Jonas Marks & Co. against Mexico, No. 639 on the said docket, or either of them.

8. If, in answering the last interrogatory, you shall have stated that you and your associates were engaged or interested in the procurement or prosecution of both of the claims in the said interrogatory mentioned, state (*a*) whether the awards on the said claims stand in the same condition as to payment by Mexico in instalments; (*b*) whether the fees accruing to you and your associates on account of the said awards were to be paid in gross on the allowance of the said

awards or by instalments; (*c*) how the fees payable to you and your associates on account of the said awards on the said claims were distributable among you when received; and (*d*) what difference, if any, there was between the terms on which, or the proportions in which, the fee in the Weil case was to be divided among you,
108 and the terms on which, or the proportions in which, the fee in the Jonas Marks & Co. case was to be divided among you.

9. If, in answering the preceding interrogatories or any of them, you shall have caused it to appear that on or about the 10th day of August, 1869, or at any time, a copartnership was entered into by Philip B. Fouke, John J. Key, H. T. Hayes, and yourself for the purpose indicated in the interrogatories numbered 5 and 6 above, state whether, so far as you know, any subsequent or independent copartnership was formed by or between any of the said parties; and, if yea, state (*a*) whether the said Fouke or the defendant Key was a member of such subsequent partnership; (*b*) who was or were the other member or members; (*c*) the terms and conditions of such subsequent copartnership; (*d*) how you know of the existence thereof, and especially if you so know by declaration of either or any of the parties, and which; and (*e*) when you first knew, and all that you know respecting such subsequent copartnership.

109 10. If, in answer to the last interrogatory, you shall have stated that a copartnership was entered into by and between Philip B. Fouke and the defendant, John J. Key, subsequent to and independent of the original copartnership of which, with H. T. Hays and yourself, they were members; or, if such was the fact, look at the following paper, marked Exhibit J. O. De C., No. 2, and State what it is, if you know.

EXHIBIT J. O. DE C., No. 2.

*Articles of Copartnership Entered into Between Philip B. Fouke and John J. Key.*

It is agreed between said parties that a partnership be this day day formed between them for the purpose of practicing law in the city of Washington, District of Columbia, and that partnership shall be equal.

It is agreed each party shall give their undivided attention to the business, and that said business embraces all matters pertaining to the profession of the law, including prosecution of claims against the Government of the United States, either before Congress
110 or the Court of Claims. Neither party shall have the right to use the name of the firm except in such matters as pertain to the business of attorneys.

It is understood and agreed that all sums received by said Key or Fouke under an agreement of partnership heretofore formed by said Key, Fouke, H. T. Hays, and J. O. De Castro shall be equally divided by said Fouke and Key.

It is agreed that an account of expenses shall be kept between

said parties pertaining to their business (except that part in prosecuting claims under the treaty of July 4th, 1868, between the United States and Mexico), and all sums received by either partner from their business and all sums retained by either party shall be entered on a book kept for that purpose, and the same shall be subject to the control of both.

It is agreed that this copartnership shall continue until the 24th day of September, 1871, unless dissolved by mutual consent.

In witness whereof we have this 24th day of September,
111 1869, set our hands and seals.

(Signed) P. B. FOUKE. [SEAL.]
JOHN J. KEY. [SEAL.]

11. If you shall have stated that the members of the copartnership formed and evidenced by the instrument of August 10th, 1869 (of which Exhibit J. O. De C., No. 1, is a copy), were engaged or interested in the procurement or prosecution of the Jonas Marks & Co. claim above mentioned, state (*a*) what was the amount of the fee to be paid that copartnership, or any member thereof, for services in behalf or on account of the said claim; (*b*) whether the said fee has been paid to or disposed of by the copartnership, or any member or members thereof; and, if so (*c*), when and how; answer fully.

12. If, in answering the last interrogatory, you shall have stated that in the year 1876, or at any time, the several members of the copartnership of August 10th, 1869, transferred, assigned, or otherwise disposed of to Lambert B. Cain, late of the city of New Orleans and State of Louisiana, deceased, all the rights of the said several
112 members in and to the fee or fees arising out of the said claim, No. 639, of Jonas Marks & Co. above mentioned, (*a*) give in full the circumstance, terms, and conditions of such transfer or disposition to the said Cain, and (*b*) state at whose request or on whose suggestion the same was brought about; (*c*) whether the defendant Key made any, and, if so, what, objection thereto, and (*d*) whether, at the time the said Key was about to make any, and, if so, what, journey, and what part such fact played in bringing about the transfer. In this connection look at the following paper, marked Exhibit J. O. De C., No. 3:

EXHIBIT J. O. DE C., No. 3.

For value received I hereby transfer to L. B. Cain all my rights and fees arising out of the claim No. 639 awarded to Jonas Marks & Co. by the United States and Mexican Claims Commission. This fee having been agreed on between the claimants on one part and the firm of Fouke and Key, attorneys, on the second part, and as H. T. Hays and myself are interested with the parties of the
113 second part in the prosecution of said claim, I hereby, by the-present, acknowledge receipt in full of my individual fees, as agreed and understood to be by all parties concerned.

Done at the city of New Orleans, State of Louisiana, this second day of June, A. D. one thousand eight hundred and seventy-six.

(Signed) J. O. DE CASTRO.

And state (*e*) what it is; (*f*) whether on or about the day therein named, June 2d, 1876, you signed the original of which it is a copy; (*g*) what sum, if any, the said Cain at the time paid you for the transfer to him of your interest in the fee or fees arising out of the said claim, No. 639, of Jonas Marks & Co.; (*h*) whether at or about the same time Fouke and Key or H. T. Hays, named in the said paper, were paid by the said Cain any, and, if so, what, sum or sums in consideration of the transfer by them of their respective interests, as aforesaid, to him, the said Cain, and (*i*) how and why the several sums were respectively arrived at and paid to each of those three (3) and yourself in the premises.

114 13. If you are unable to recall the exact amounts paid by Lambert B. Cain to Fouke, Key, Hays, and yourself, in or about the month of June, 1876, for your several interests, as aforesaid, in the fee or fees arising from the above-mentioned claim, No. 639, of Jonas Marks & Co. against Mexico, state whether the following are or are not the respective amounts:

| | |
|---|---|
| To P. B. Fouke | $3,440 |
| " John J. Key | 3,440 |
| " H. T. Hays | 1,720 |
| " yourself | 1,720 |

And, if yea, state how and why those several amounts were arrived at and paid in the premises.

14. If you are still unable to state the respective amounts paid by the said Cain, as mentioned and required of in the last two (2) interrogatories, state in what proportions the several parties, viz., Fouke, Key, Hays, and yourself, were paid by your respective interests in the fee or fees accruing to you out or on account of
115 the said claim, No. 639, of Jonas Marks & Co.—that is, in what proportion did the amount paid each of the others stand to the amount paid you, and how the respective proportions were arrived at and paid by Cain in the premises.

16. If you can neither give the amounts paid by Cain to Fouke, Key, Hays, and yourself, as mentioned and inquired of in the last three (3) interrogatories, nor the proportions in which they and you were paid by Cain for their and your interests in the fee or fees arising out of the said claim, No. 639, of Jonas Marks & Co., state whether H. T. Hays and yourself were or were not paid similar amounts and each of Fouke and Key and amount equal to twice that paid to each of Hays and yourself; and if yea, state why such was the case.

16. If, in answering the preceding interrogatories or any of them, you shall have caused it to appear that subsequently to the formation by Fouke, Key, Hays, and yourself, on August 10th, 1860, of a copartnership under the conditions and for the purposes in-
116 dicated by the Exhibit J. O. De Castro, No. 1, to the 5th inter- 5th interrogatory, Fouke and Key entered into a copartnership under the conditions and for the purposes indicated by the Exhibit J. O. De C., No. 2, to the 10th interrogatory, state (*a*) whether such subsequent copartnership of Fouke and Key was entered into

with the knowledge of Hays and yourself, or either, (*d*), whether its existence was voluntarily made known to you by either Fouke and Key, or either, and (*c*) all the facts respecting your first becoming aware thereof and what you did thereupon.

17. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

117 In the Supreme Court of the District of Columbia, the 7th day of February, 1883. In Equity.

HENRY E. DAVIS, Adm'r,
*v.*
JOHN J. KEY. } No. 7674.

The defendant excepts—

To interrogatory No. 5, as calling for an explanation from the witness of a copy of a written instrument; the original thereof is neither produced nor shown to be accessible to him.

To interrogatory No. 6, as requiring the witness to state the terms of copartnership articles evidenced by writing.

To interrogatory No. 8, as calling for the opinion of the witness and for his construction of a written instrument.

To interrogatory No. 9, as calling for the construction of an instrument or instruments in writing as involving matters between third persons and declarations from strangers.

To interrogatory No. 19, as liable to the objection already taken above to interrogatory No. 5,

118 To interrogatory No. 12, as incompetent, irrelevant, and immaterial.

To interrogatory No. 13, as leading, incompetent, and immaterial.

To interrogatory No. 14, as incompetent, irrelevant, and immaterial.

To interrogatory No. 15, as incompetent, irrelevant, immaterial, and calling also for the opinion of the witness.

To interrogatory No. 16, as incompetent, irrelevant, and immaterial.

And the defendant, not waiving but specially insisting upon each and every of his foregoing exceptions and objections, propounds to the witness the following—

Cross-interrogatories:

X Interrog. No. 1. Were you at any time connected with the defendant in a partnership relation, except under some written instrument; if yea, when, where, and for how long?

X Interrog. No. 2. Have you at any time learned from the defendant what sum of money he received as a fee in the case of Jonas Marks & Co.?

X interrog. No. 2. In obtaining from Cain your fee in that
119 case, had you any conference or communication whatever with the defendant; if so, what, when, and where?

X Interrog. No. 3. Was not Cain a member of the firm of Jonas Marks & Co. in the year 1876 and previously?

X Interrog. No. 4. Was not Fouke, in that year, indebted to that firm to a considerable amount?

X Interrog. No. 5. Did you not settle and receive your fee in the case of Jonas Marks & Co. with and from Cain directly and without the intervention of any other person or persons?

X Interrog. No. 6. Did not Fouke receive his fee in that case under the same circumstances and without conference or communication with yourself, Key, or Hays?

X Interrog. No. 7. Did not you, Fouke, Key, and Hays settle with Cain for your individual fees in that case without previous arrangement or knowledge between you of what sum of money you would take on the settlement?

X Interrog. No. 8. Did not each bargain for himself alone in effecting the settlement?

X Interrog. No. 9. Did you inform Key as to the amount of money you would receive or had received from Cain on such settlement?

X Interrog. No. 10. When, where, how, and from — did you learn the amounts or proportions of the fees received in the — of
120 Jonas Marks & Co. from Cain by Fouke and Key respectively?

X Interrog. No. 11. Have you any knowledge of any partnership relations that existed between Fouke and Key at any time, except such as you have derived from the papers submitted to you on your direct examination? If yea, what knowledge, and when, how, where, and from whom did you procure it?

X Interrog. No. 12. Has not Key, to your knowledge, ever since the execution of the agreement made between Cain, yourself, Fouke, Hays, Boynton, and Key on November 5, 1875, claimed one-fourth of the award in the Weil case?

X Interrog. No. 13. Was not such the claim on the part of Key, to your knowledge, well known to Fouke at the time of the execution of the said agreement and thereafter in his lifetime?

X Interrog. No. 14. Do you know, of your own knowledge, that it was the purpose of all the parties to the said agreement to settle and adjust by the same the claims for fees not only as against Cain, but at the same time as between all the persons who were to share by that agreement in the fees?

121 In the Supreme Court of the District of Columbia.

HENRY E. DAVIS, Ad'r,
*ag'st*
JOHN J. KEY. } Eq. No. 7674.

The complainant excepts to the cross-interrogatories of the defendant, as follows:

X interrogatory No. 4. As incompetent, irrevelant, and immaterial.

X interrogatory No. 12. As incompetent, irrevelant, and immaterial, as non-responsive, and as assuming the execution of an alleged agreement respecting which the interrogatories of the complainant, as the cross-interrogatories of the defendant, are wholly silent.

X interrogatory No. 13. For the same reasons of exception to No. 12.

X interrogatory No. 14. For the same reason of exception to No. 12.

122 *Motion of Complainant for Time to Take Proof. Filed March 9, 1883.*

In the Supreme Court of the District of Columbia.

HENRY E. DAVIS, Ad'r, &c., Compl't,
*ag'st*
JOHN J. KEY, Def't. } Eq. No. 7674.

And now comes the complainant in the above-entitled cause and moves the court to appoint as examiner a suitable and proper person, to whom the clerk shall be directed to issue a commission in due form to take the deposition of Jacob O. De Castro, resident in the city of Savannah and State of Georgia, on the interrogatories and cross-interrogatories filed in the said cause on the 7th day of February, 1883, and for that purpose to extend by the space of — days from the date hereof the time to which, by the order of 26th December, 1882, the said complainant was limited for taking testimony in his behalf.

And for cause in support of the said motion the complainant shows as follows:

That he brought this action as administrator *de bonis non*
123 of the estate of Philip B. Fouke, deceased, and has, therefore, no personal knowledge of the matters and things in respect of which relief is sought against the defendant, John J. Key; that as such administrator *d. b. n.* he also brought in this court the certain actions in equity numbered 7587 and 7595, the certain John J. Key named in the bills of complaint therein being the same with the said defendant, John J. Key, and the certain Jacob O. De Castro therein named being the same Jacob O. De Castro hereinbefore mentioned whose deposition is desired, the said bills of complaint in the said causes and the proceedings therein being hereby made part hereof; that at or about the filing of the said bills in the said causes numbered 7587 and 7595 aforesaid the complainant first became acquainted with the said defendant Key, as also with the said De Castro and the certain Lambert B. Cain in the said bills mentioned, the said De Castro and Cain being then temporarily in the city of Washington for the purpose of collecting their interests in the amount then about to be distributed by the Secretary of State of the United States on account of the certain award on
124 the claim of Benjamin Weil in the bill of complaint herein described; that at or about the time of filing the said bills in the said causes numbered 7587 and 7595 the said Cain and the de-

fendant, John J. Key, had a disagreement growing out of their respective relations to the said award to Benjamin Weil aforesaid, resulting in the bringing by the said Key an action at law, numbered 22,727 on the docket of this court, against the said Cain for the sum of $800 on account of certain alleged expenses borne by the said Key for the just benefit of all concerned in the said award, towards which said expenses this complainant also was requested to contribute, but would not; that on or about the same day on which the said actions was brought by the said Key, to wit, the 12th day of March, 1881, the said Cain exhibited to this complainant certain papers and documents showing the certain payments inquired of in and by the interrogatories numbered 11, 12, 13, 14, and 15 of those filed as aforesaid on the 7th day of February, 1883, promising the complainant the free use of the said papers and documents wherever by him desired; that the said Cain thereupon immediately
125 returned to his home in New Orleans, La., where shortly afterwards he suddenly died; that since his death the complainant has *has* repeatedly endeavored to procure from the said Cain's executor the said papers and documents, having even engaged counsel in the city of New Orleans for that purpose, but to no avail; that during his stay in the said city of Washtngton, at the time aforesaid, the said De Castro was also hostile in feeling to the said defendant, and expressed to the complainant his intention of suing him, the said Key; that while so hostile the said De Castro freely spoke to the complainant of the anger felt by himself and the Harry T. Hays mentioned in the bill of complaint herein towards both the defendant Key and the complainant's intestate upon the discovery of their, the said Fouke and Key's, subsequent partnership, respecting which the said De Castro declared himself fully conversant and promised the complainant to render all the aid in his, the said De Castro's, power in the premises; that the said De Castro *was* freely acknowledged to the complainant the dis-
126 position of the certain — in the case of Jonas Marks & Co., as the same is inquired of in the interrogatories numbered 11, 12, 13, and 14 as aforesaid, and exhibited to the complainant the fullest frankness in the premises, the said Cain and the said De Castro being together with the complainant when much of the complainant's information in the premises was communicated, respectively, by the one and the other; that just before quitting the city of Washington, at or about the time aforesaid, the said De Castro furnished his address to the complainant inviting communication with him by the said complainant whenever his, the said De Castro's, aid and assistance in the premises were desirable; that accordingly when the complainant had made — unsuccessful effort to obtain the papers and documents aforesaid from the executor of the said Cain he communicated with the said De Castro, setting forth his, the complainant's, desire in the premises, and inquiring respecting his, the said De Castro's, convenience in that behalf; that of such communication the complainant never received from the said De Castro any ac-
127 knowledgment or notice whatever, though the complainant subsequently learned from the defendant Key in conversation

that he, the said Key, had received from the said De Castro a letter in which he, the said De Castro, had mentioned the receipt by himself of such communication from the complainant; that on December 26th, 1882, on motion of the defendant, by his counsel, an order was made by the court in this cause requiring the complainant to complete his testimony within thirty (30) days thereafter, whereupon the complainant again attempted to avail himself of the testimony of the said De Castro, not communicating with him, however, but of necessity resorting to a circuitous process to locate the whereabouts of the said De Castro and learn the probability of securing his deposition; that, having accomplished such object to his satisfaction, he thereupon communicated the result to the defendant's counsel, John Selden, Esq., who courteously acceded to the complainant's request respecting the filing interrogatories and
128 cross-interrogatories — be propounded [to] the said De Castro, which said interrogatories and cross-interrogatories were accompanied by a certain stipulation, the whole having been, as aforesaid, duly filed herein on the 7th day of February, 1883, and being the same referred to and mentioned in the foregoing motion; that immediately upon the filing of the said stipulation with the accompanying interrogatories and cross-interrogatories the same were sent by the complainant to Savannah to the examiner therein designated, who duly received the same; that on the 15th day of February, 1883, the complainant received from the said examiner a letter, under date of the 13th, stating that the said De Castro had declined to answer the said interrogatories and cross-interrogatories, pleading business as the ground of such declination; and finally that on the 16th day of February, 1883, the complainant received from the said examiner a further letter, under date of the 14th, stating that the said De Castro had refused to answer at all, on the grounds "that the said interrogatories are
129 impertinent; that he knows nothing about the case; that he will not answer unless compelled by law, and that he has good authority for refusing to answer."

And the complainant states further that he is informed by the defendant's counsel that this cause has been by him ordered on the calendar for hearing, and that from the condition of the calendar he, the complainant, has no doubt whatever that the commission prayed for may be issued, and the deposition of the said De Castro duly taken and returned into court, before the said cause can be reached in its turn for hearing.

HENRY E. DAVIS, *P. P.*

The statements hereinbefore made of my own knowledge are true, and those made on information and belief I believe to be true.

HENRY E. DAVIS.

Subscribed and sworn to before me this 9th day of March, A. D. 1883.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, No. 3,
*Ass't Clerk.*

130 *Order for Commission to Take Proof. Filed April* 6, 1883.

In the Supreme Court of the District of Columbia.

HENRY E. DAVIS, Ad'r, *ag'st* JOHN J. KEY. } Eq. No. 7674.

On motion of the complainant it is, this 6th day of April, 1883, ordered that the complainant have leave to take the deposition of Jacob O. De Castro, of Savannah, Ga., on interrogatories and cross-interrogatories, and that for that purpose the clerk of this court issue forthwith a commission addressed to Uldrick H. McLaws, of Savannah, Georgia, authorizing and directing him to take the said deposition; and, further, that the complainant have ten (10) days from this day within which to take said deposition and return the same into this court.

W. S. COX, JR.

131 *Commission to Take Depositions.*

In the Supreme Court of the District of Columbia, the 6th day of April, 1883.

HENRY E. DAVIS, Adm'r *d. b. n.* of Philip B. Fouke, Complainant, *v.* JOHN J. KEY, Defendant. } No. 7674. Equity Docket 21.

The President of the United States to Uldrick H. McLaws, Savannah, Georgia, Greeting:

You know that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with power and authority, to examine Jacob O. De Castro, as a witness for the complainant in the above-entitled cause, upon the interrogatories and cross-interrogatories annexed to this commission, and therefore you are hereby commanded, at a certain day and place, or certain days and places, to be appointed by you, to cause said
132 witness to come before you, and then and there examine him on oath or affirmation upon the said interrogatories, and reduce his testimony into writing to be signed by said witness, and having so done annex the same to this writ, closed up under your seal, and make return thereof into said court with all convenient speed.

Witness:

D. K. CARTTER,
*Chief Justice.*

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clerk.*

133 In the Supreme Court of the District of Columbia.

HENRY E. DAVIS, Adm'r *d. b. n.* of Philip B. Fouke, Compl't. *against* JOHN J. KEY, Defendant. } Eq. No. 7674. Doc. 21.

Interrogatories to be propounded in behalf of the complainant in the above-entitled cause to Jacob O. De Castro under the commission hereto annexed and in accordance with the order of the court of the 6th day of April, 1883.

1. State your name, age, residence, and occupation.

2. Do you know the defendant, John J. Key? If yea, how long have you known him and under what circumstances did you first become acquainted with him?

3. Did you in his life-time know the complainant's intes-
134 tate, Philip B. Fouke? If yea, how long did you know him and under what circumstances did you first become acquainted with him?

4. State fully and paecisely in what occupation or employment you were engaged between the 10th day of August, 1869, and the 20th day of November, 1876.

5. If, in answering the last interrogatory, you shall have stated that at any time between the dates named you were engaged in any occupation or employment in connection with the complainant's intestate, the said Fouke, and the said defendant, John J. Key, state whether such engagement was evidenced by any articles of agreement or copartnership; and, if yea, whether you have in your possession or control the original of such articles or any duplicate, triplicate, or quadruplicate thereof; and, if yea, produce the same.

6. If you shall have stated that you were engaged as as-
135 sumed by the last interrogatory, and that such articles of agreement or copartnership were entered into; and, if you shall have produced the same, state in whose handwriting the same are, as also the respective signatures thereto, and state whether the following paper, marked Exhibit J. O. De C. No. 1, is a copy, exactly or substantially, thereof:

EXHIBIT J. O. DE C. No. 1.

Articles of copartnership entered into between John J. Key, of the city of Terre Haute, State of Indiana; Philip B. Fouke, now of the city of New Orleans, State of Louisiana; H. T. Hays and J. O. De Castro, both of the city of New Orleans, State of La.

It is agreed between said parties that a copartnership is this day formed between them for the purpose of prosecuting claims in behalf of the citizens of the United States of America against the government of Mexico, and of citizens of the government of Mexico against the Government of the United States of America.

It is agreed between said parties that the said Fouke, Hays, and

De Castro shall procure claims of citizens of the respective
136 governments named against the other and attend to taking the necessary proof, and that the said claims shall be sent to said Key at Washington city, accompanied with a power of attorney from the claimant, authorizing said Key to prosecute said claims, and authorizing him to receive from said governments any and all amounts that may be due and coming to them.

That said Key shall retain all fees as agreed on by said parties and shall pay over to said parties acting in the capacity of special attorneys for that purpose of the claimant the amount due to them as such special attorneys, both for the amount awarded the claimant and for fees due Hays, Fouke, and De Castro in the case, either at Washington, New York, or New Orleans, as he may be directed from time to time by either Hays, Fouke, *and* De Castro, acting as the special agent for the claimant, whose power as such in all cases sent by them is, to all intents and purposes, recognized by the parties to this contract.

That said Key shall retain in all cases, when no special
137 direction is given, the portion due to said firm, paying over to the other parties at once, or accounting in such manner as they may from time to time direct for the proportion of the fees so retained.

It is agreed that all fees retained under this copartnership shall be divided one half part to said Key, the other half part to said Fouke, Hays, and De Castro.

Said Key is to remain at Washington city, said Hays at New Orleans, said De Castro to be in the City of Mexico, and the said Fouke is to render his services wherever they shall be needed.

In witness whereof we have hereunto set our hands and seals this tenth day of August, 1869.

(Signed)

JOHN J. KEY. [SEAL.]
P. B. FOUKE. [SEAL.]
HARRY T. HAYS. [SEAL.]
J. O. DE CASTRO. [SEAL.]

7. If, *the* in answering the 4th and 5th interrogatories, you
138 shall have stated that you were engaged as assumed in connection with the said Fouke and Key, and that articles of agreement or copartnership were entered into accordingly, but that you have neither the original thereof nor any copy thereof as inquired of, state where such original is if you know, or in whose possession and where it last was, so far as you know; whether the foregoing Exhibit J. O. De C. No. 1 is exactly or substantially a copy thereof, by whom the same was signed, and whether you are the J. O. De Castro therein named and whose signature is annexed thereto.

8. If by your answers to the last two interrogatories (6 and 7) it shall have appeared that you were party to an agreement of copartnership, evidenced by articles whereof the Exhibit J. O. De C. No. 1 is exactly or substantially a copy, state whether, in pursuance of such articles or the agreement evidenced thereby, you engaged with the other parties therein named in procuring or prosecuting claims

before the late joint commission created by convention of the 4th day of July, 1868, between the United States and Mexico,
139 for the adjudication of all claims of either of the said count-ies against the government of the other, arising out of transactions of a date subsequent to the 2d day of February, 1848; and, if yea, state (*a*) when, (*b*) under what circumstances, *and* (*c*) on what terms you become so engaged, and (*d*) how long you so continued.

9. If, in answering the last interrogatory, you shall have stated that, in pursuance to an agreement of copartnership, evidenced by articles of which the Exhibit J. O. De C. No. 1 is exactly or substantially a copy, you were engaged as in the said interrogatory assumed, state whether Fouke, Key, Hays, and yourself were engaged or interested in the procurement and prosecution before the above-described commission of the claim of Benjamin Weil against Mexico No. 447 on the American docket, so called, of the said commission, and the claim of Jonas Marks & Co. against Mexico, No. 639, on the said docket or either of them.

140 10. If, in answering the last interrogatory, you shall have stated that you and your associates were engaged or interested in the procurement or prosecution of both of the claims in the said interrogatories mentioned, state (*a*) whether the awards on the said claims, if any, stand in the same condition as to payment in instalments; (*b*) whether the fees *occurring* to you and your associates on account of the said awards on the said claims were payable in gross on the allowance of the said awards or by instalments; (*c*) how the fees payable to your and your associates on account of the said awards on the said claims were distributable among you when received, and (*d*) what difference, if any, there was between the terms on which or the proportions in which the fee in the Weil case was to be divided among you and the terms on which or the proportions in which the fee in the Jonas Marks & Co. case was to be divided among you.

11. If, by your answers to the preceding interrogatories, or any of them, it shall have appeared that on or about the 10th
141 day of August, 1869, or at any time a copartnership was entered into by Philip B. Fouke, John J. Key, H. T. Hays, and yourself for the purpose indicated in the interrogatories numbered 6 and 8 above, state whether, if you know, any subsequent or independent copartnership was formed or entered into by or between any of the said parties, and, if yea, state (*a*) whether the said Philip B. Fouke or the defendant, John J. Key, was a member of such subsequent copartnership; (*b*) who was the other member or members thereof; (*c*) how you know of the existence thereof, and especially if you so know by declaration of either or any of the parties, and, if so, which; (*d*) when you first knew of such subsequent copartnership, and (*e*) whether, if you know, it was evidenced by any instrument of writing.

12. If, in answering the last interrogatory, you shall have stated that a copartnership was formed and entered into by and between Philip B. Fouke and the defendant, John J. Key, subsequent

142 to and independent of the original copartnership of which, with yourself, they were members, or if such was the fact, and such copartnership was evidenced by an instrument of writing, state whether you have the original of such instrument, and, if not, where and in whose possession it last was, if you know; and, further, whether you have ever seen the said original; and, if so, and you have it not and it is not within your reach or control, then (*a*) whose signatures were subscribed thereto, and (*b*) look at the following paper, marked Exhibit J. O. De C. No. 2, and state what it is, if you know:

EXHIBIT J. O. De C. No. 2.

Articles of copartnership entered into between Philip B. Fouke and John J. Key.

It is agreed between said parties that a partnership be this day formed between them for the purpose of practicing law in the city of Washington, District of Columbia, and that partnerships shall be equal.

It is agreed each party shall give their undivided atten-
143 tion to the business, and that said business embraces all matters pertaining to the profession of the law, including prosecution of claims against the Government of the United States, either before Congress or the Court of Claims. Neither party shall have the right to use the name of the firm except in such matters as pertain to the business of attorneys.

It is understood and agreed that all sums received by said Key or Fouke under an agreement of partnership heretofore formed by said Key, Fouke, H. T. Hays, and J. O. De Castro shall be equally divided by said Fouke and Key.

It is agreed that an account of expenses shall be kept between said parties pertaining to their business (except that part in prosecuting claims under the treaty of July 4th, 1868, between the United States and Mexico), and all sums received by either partner from their business and all sums retained by either party shall be entered on a book kept for that purpose, and the same shall be subject to the control of both.

144 It is agreed that this copartnership shall continue until the 24th day of September, 1871, unless dissolved by mutual consent.

In witness whereof we have, this 24th day of September, 1869, set our hands and seals.

(Signed) P. B. FOUKE. [SEAL.]
JOHN J. KEY. [SEAL.]

13. If you shall have stated that Philip B. Fouke and John J. Key formed and entered into a copartnership subsequent to that of August 10th, 1869, but cannot say whether the same was evidenced by an instrument of writing, or, if so evidenced, that you never saw the original thereof, and can give no account of such original, nor are yet able to recognize the Exhibit J. O. De C. No. 2 as a copy of

such original, then state (*a*) when the said copartnership between Fouke and Key was formed, (*b*) the object, terms, and conditions thereof, if you know, and how you so know, and (*c*) all you know touching such copartnership.

14. If you shall have stated that Fouke, Key, Hays, and
145 yourself, forming the copartnership evidenced by articles of which the Exhibit J. O. De C. No. 1 is exactly or substantially a copy, were engaged or interested in the procurement or prosecution of the Jonas Marks & Co. claim above mentioned, state (*a*) what was the amount of the fee to be paid that copartnership, or any member or members thereof, for services in behalf or on account of the said claim, (*b*) whether the said fee has been paid to or disposed of by the copartnership, or any member or members thereof, and, if so (*c*), when, how, to whom, and under what circumstances. Answer fully.

15. If, in answering the last interrogatory, you shall have stated that in the year 1876, or at any time, the several members of the copartnership of August 10th, 1869, transferred, assigned, or otherwise disposed of to one Lambert B. Cain all their rights in and to the fee or fees arising out of the said claim No. 639 of Jonas Marks and Co. above mentioned, state (*a*) who the said Lambert B. Cain was, as to
relation to the said firm of Jonas Marks & Co., (*b*) whether he is
146 now living or dead, and, if dead, when and where he died; (*c*), the time, place, circumstances, terms, and conditions of such transfer or disposition to the said Cain, and, in this connection (*d*), at whose request or on whose suggestion the same was brought about; (*e*), whether the defendant Key made any, and, if so, what, objection thereto, and (*f*) whether at the time the said Key was about to make any, and, if so, what, journey, and what, if any, part such fact played in bringing about the transfer or disposition to Cain.

16. In making such transfer or disposition, if any, to the said Cain, did the members or any member of the copartnership of August 10th, 1869, sign any, and, if so, what, receipts or other evidences of payment; and, if yea, to whom were such receipts or evidences given; did you sign one of them; and, if so, where is it, if you know, and who had it last in possession and where, if you know? If you shall have stated that you signed such receipt and that when last known of by you it was in the possession of said Cain,
147 at New Orleans or elsewhere, so that it is not now within your possession, control, or reach, look at the following paper, marked Exhibit J. O. De C. No. 3, and state (*a*) what it is, (*b*) whether on or about the day therein named—June 2d, 1876—you signed the original of which it is exactly or substantially a copy, (*c*) what sum, if any, the said Cain paid you for the transfer to him of your interest in the fee or fees arising out of the said claim of Jonas Marks & Co., (*d*) whether at or about the same time Fouke, Key, or H. T. Hays, as named in the said paper, were paid by the said Cain and similarly receipted for; — any, and, if so, what, sum or sums, in consideration of the transfer by them of their respective interests as aforesaid to him, the said Cain, and (*e*) how and why or on what

basis of division the several sums were respectively arrived at and paid to each of those three and yourself in the premises.

EXHIBIT J. O. DE C. No. 3.

148 For value received I hereby transfer to L. B. Cain all my rights and fees arising out of the claim No. 639, awarded to Jonas Marks & Co. by the United States and Mexican Claims Commission. This fee having been agreed on between the claimants on one part and the firm of Fouke and Key, attorneys, as the second part, and as H. T. Hays and myself are interested with the parties of the second part in the prosecution of the said claim, I hereby, by the present, acknowledge receipt in full of my individual fees as agreed and understood to be by all parties concerned.

Done at the city of New Orleans, State of Louisiana, this second day of June, A. D. one thousand eight hundred and seventy-six.

(Signed) JB. O. DE CASTRO.

17. If you are unable to recall the exact amounts paid by Lambert B. Cain to Fouke, Key, Hays, and yourself in or about the month of June, 1876, for your several interests, as aforesaid,
149 in the fee or fees arising from the above-mentioned claim, No. 639, of Jonas Marks & Co. against Mexico, state whether the following are or are not the respective amounts:

| | |
|---|---|
| To P. B. Fouke | $3,440 |
| " John J. Key | 3,440 |
| " H. T. Hays | 1,720 |
| " Yourself | 1,720 |

and, if yea, state how, why, or on what basis of division or calculation those several amounts were arrived at and paid in the premises.

18. If you are still unable to state the respective amounts paid by Cain, as mentioned and inquired of in the last two interrogatories, state in what proportions the several parties, viz., Fouke, Key, Hays, and yourself, were paid for your respective interests in the fee or fees occur-ing to you out or on account of the said claim, No. 639, of Jonas Marks & Co.—that is, in what proportion did the amount paid each of the others stand to the amount paid you, and how, why, and on what basis of calculation the respective proportions were arrived at and paid in the premises.

150 19. If you can neither give the amounts paid by Cain to Fouke, Key, Hays and yourself, as mentioned and inquired of in the three last interrogatories, nor state the proportions in which they and you were paid by Cain for their and your interests in the fee or fees arising out of the said claim, No. 639, of Jonas Marks & Co., state whether H. T. Hays and yourself were or were not paid similar amounts, and each of Fouke and Key an amount equal to twice that paid to each of Hays and yourself, and, if yea, state why the payments were made in those proportions.

20. If by your answers to the preceding interrogatories or any of

them it shall have appeared that subsequently to the formation by Fouke, Key, Hays, and yourself on August 10th, 1869, of a copartnership under the conditions and for the purposes indicated by the Exhibit J. O. De C. No. 1, Fouke and Key entered into a copartnership under the conditions and for the purposes indicated in the Exhibit J. O. De C. No. 2, state (*a*) whether such subsequent
151 copartnership of Fouke and Key was entered into with the knowledge of Hays and yourself, or either; (*b*) whether its existence was voluntarily made known to you by either Fouke and Key, or either of them, and (*c*) all the facts respecting your first becoming aware thereof, and what you did thereupon.

21. Has any series of interrogatories prior to these been submitted to you for answer in this cause? If yea, did you answer the same? If you did not answer them, for what reason and on whose direction or authority did you refuse so to do; and what correspondence or communication, if any, had you with or from the defendant, John J. Key, in respect to answering or not answering the same? Answer in full.

22. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the sub-
152 ject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

HENRY E. DAVIS, *P. P.*

In the Supreme Court of the District of Columbia, the 7th day of April, 1883. In Equity.

HENRY E. DAVIS, Adm'r, &c.,
*v.*
JOHN J. KEY. } No. 7674.

The defendant objects and excepts to—

Interrogatory 6. As requiring the witness to state what constitutes a substantial copy of a written instrument whereof the original is assumed to be in his possession.

Interrogatory 7. As requiring the witness to state the contents of a written instrument not shown to be lost.

Interrogatory 8. As requiring the witness to state the contents of articles of copartnership.

Interrogatory 10. As calling for the construction by the witness of written instruments.

153 Interrogatory 11. As calling for particulars of a written contract not shown to be lost or destroyed.

Interrogatory 12. As requiring parol proof of a writing not shown to be lost or destroyed; and, further, as incompetent, irrelevant, and immaterial.

Interrogatory 13. As calling for the particulars of a written instrument not shown to be lost or destroyed.

Interrogatory 15. As incompetent, irrelevant, and immaterial.

Interrogatory 16. As incompetent, irrelevant, and immaterial as between the parties to this cause.

Interrogatory 17. As leading, incompetent, irrelevant, and immaterial.

Interrogatory 18. As incompetent, irrelevant, and immaterial and as calling for the conclusion of the witness.

Interrogatory 19. As open to the *executions* taken to interrogatory 18 above.

Interrogatory 20. As incompetent, irrelevant, and immaterial.

And the defendant, not waiving, but specially insisting
154 upon each and every of his above objections and exceptions, propounds to the witness the following cross-interrogatories:

X Interrogatory No. 1. Where, for the last eighteen months, have you resided? Was such your residence during that period known to the complainant in this cause (and where first, within that period, did he communicate with you touching your testimony in this suit)?

X Interrogatory No. 2. Did you, at the city of Washington, in the winter of 1880–1881, or elsewhere at any other time, communicate to the complainant in this case the facts, or any of the facts, by him assumed in interrogatories 14, 15, 18, and 19, to you already above propounded?

X Interrogatory No. 3. Did you, at the said city, during the winter aforesaid, or elsewhere, or at any other time, furnish the complainant in this cause with your address, and invite him to com-
155 municate with you whenever your aid and assistance might be deemed by him desirable in the controversy or controversies then pending between himself and the defendant, John J. Key?

X Interrogatory No. 4. Has the defendant at any time, by correspondence or otherwise, sought to influence, obstruct, color, or affect your testimony or the giving thereof in the present case?

X Interrogatory No. 5. Has a partnership relation at any time existed between the defendant and yourself except under some articles of writing? If yea, when and for what period?

X Interrogatory No. 6. Have you at any time ascertained from the defendant the amount of the compensation or fee by him received in the case of Jonas Marks & Co.?

X Interrogatory No. 7. In adjusting with Cain the amount of your fee in that case had you then or previously any confer-
156 ence or communication upon the subject with the defendant? If, yea, what and when and where?

X Interrogatory No. 8. Was not Cain, before and in the year 1876, a member of the firm of Jonas Marks & Co., and was not Fouke, in that year, considerably indebted unto the same firm?

X Interrogatory No. 9. In the case of Jonas Marks & Co. did you not adjust and receive your fee with and from Cain directly and without arrangement or conference with any third person or persons?

X Interrogatory No. 10. Did not Fouke, in the same case, adjust

and settle his fee with Cain with arrangement or conference with yourself or with Hays or Key?

X Interrogatory No. 11. Did not Fouke and Key, Hays, and yourself each adjust and settle your several fees with Cain in that case without concert or arrangement and without previous knowledge by any of you what the others would insist upon?

157 X Interrogatory No. 12. Did not each of you severally bargain for himself in effecting a settlement of his fee in that case with Cain?

X Interrogatory No. 13. Did you at any time inform Key of the amount of money you had received or would receive from Cain in settlement of your fee in that case? If so, when and where?

X Interrogatory No. 14. When, where, how, and from whom, if at all, did you first ascertain the amounts or proportions of the fees received in that case from Cain by Fouke and Key respectively?

X Interrogatory No. 15. Have you any knowledge of the partnership relations at any time existing between Fouke and Key, except what you may from inference derive from the papers set forth in the direct interrogatories to you above propounded? If yea, what knowledge, and when, how, and from whom did you acquire it?

158 X Interrogatory No. 16. Has not the defendant Key, to your personal knowledge, claimed as his fee one-fourth of the amount of the award in the Weil case ever since the execution of the agreement made on November 5, 1875, between Cain, yourself, Fouke, Hays, Boynton, and Key?

X Interrogatory No. 17. Was not such the claim and pretension to your personal knowledge well known to Fouke at the time of the execution of the said agreement and thereafter during his lifetime?

X Interrogatory No. 18. Were such the claim and pretension of Key ever by Fouke, in his life-time, opposed, controlled, or questioned in any manner whatsoever, to your knowledge?

X Interrogatory No. 19. Do you not know, of your own personal knowledge, that before and at the time of the execution of the said agreement it was the purpose and intention of all the parties thereto to settle and adjust all claims for fees in the Weil case not only as against Cain, but likewise as between all persons amongst themselves who were, by that agreement, to share in those fees?

JOHN SELDEN,
*Sol. for Defendant.*

159 In the Supreme Court of the District of Columbia. In Equity.

HENRY E. DAVIS, Adm'r,
*ag'st*
JOHN J. KEY. } No. 7674.

The complainant objects and excepts to—

Cross-interrogatories No-. 16, 17, and 18 as irrelevant, immaterial, and inadmissible, and to cross-interrogatory No. 19 as open to

the same objections, and the further objection that it calls upon the witness to state the intention of and to construe a written instrument.

H. E. DAVIS, *P. P.*

160 *Deposition of J. O. De Castro. Filed April* 13, 1883.

In the Supreme Court of the District of Columbia.

HENRY E. DAVIS, Adm'r *d. b. n.* of Philip B. Fouke, Compl't, *vs.* JOHN J. KEY, Def't. } Eq. No. 7674. Doc. 21.

STATE OF GEORGIA, *Chatham County, City of Savannah:*

By virtue of a commission issuing from the supreme court of the District of Columbia I have caused Jacob O. De Castro, the witness in said commission named, to come before me, who, being duly sworn, deposes and answers to certain interrogatories thereto annexed as follows:

To the 1st *duty* he answers: My name is Jacob O. De Castro; I reside in Savannah, Ga.; I am a merchant.

To the 2nd he answers: I have know- John J. Key since
161 1869. On my way to Mexico I stopped in Washington to receive instructions from him in regards to our business project.

To the 3rd he answers: I knew Philip B. Fouke in the city of New Orleans; was introduced to him, in the year 1869, by Gen'l Harry T. Hays.

To the 4th he answers: In the latter part of 1869 I went to Mexico for the benefit of the firm of Fouke & Key, in which I was interested, and I returned to New Orleans in the month of February, 1870.

To the 5th he answers: From February, 1870, to November, 1876, I was engaged in the naval department of the custom-house in New Orleans; there was a written agreement between us; I have no original or copy in my possession.

To the 6th he answers: The copy of the agreement marked "Exhibit J. O. De C. No. 1" is a true copy to the best of my knowledge.

162 To the 7th he answers: So far as I know the original agreement was last in the hands of Judge Key. The copy of the agreement marked "Exhibit J. O. De C. No. 1" is — true copy to the best of my knowledge and belief, signed by all the parties therein specified, and I am the J. O. De Castro named.

To the eighth he answers: I was so engaged as per copy agreement, "Exhibit No. 1," in the interrogatories. The copy of the agreement answers the rest of this question as well or better than I can.

To the ninth he answers: We were engaged in the prosecution of both the said claim-.

To the 10th he answers: Claim of B. Weil stands in the same relation, as shown in the copy agreement marked "Exhibit J. O. De C.

No. 1." My interest in the claim of Jonas Marks & Co. I have disposed of. The fees were distributed in accordance with the said copy agreement. We took the claims of Jonas Marks & Co. for
163 less fee than that of Weil; don't remember what the difference was.

To the 11th he answers: I don't know if any copartnership (independent of the one mentioned) was ever entered into by the said parties; I heard Fouke say in 1875 that he had private arrangements; I know nothing to that effect.

To the 12th he answers: Knows nothing about this question.

To the 13th he answers: All I know I stated in my answer to the 11th direct interrogatory.

To the 14th he answers: I do not remember the amount of the fee paid in the Jonas Marks & Co. claim; I disposed of my interest in said claim, and to the best of my knowledge the other parties interested did likewise; don't remember the exact date—in the year 1875 or 1876; we all disposed of our interest to L. B. Cain.
164 To the 15th he answers: Lambert B. Cain was a partner of Jonas Marks & Co.; the said Cain is now dead; died in the city of New Orleans in 1881; don't remember exact date; I don't remember the time, or the place, or the circumstances, or the terms or conditions of such transfer to said Cain; I don't know of any request to make said transfer; dont know whether Key did so or not; I think that Key was about starting for Europe when the transaction was made; I know nothing further about this question.

To the 16th he answers: I signed and gave Cain a receipt for my interest; don't know whether the other parties gave Cain receipts or not; I don't know who has or where said receipt is; the last time I saw it was when it was *within* by me and given to Cain for my share and interest; this happened in New Orleans.

The copy marked "No. 3" is a copy, to the best of my knowl-
165 edge, of the receipt given by me to Cain; Cain paid me for my interest about $1,700.00.

I don't know what he paid the others, and don't know whether they gave Cain receipts.

I know of no basis of division except what is specified in the original articles of copartnership, of which "Exhibit J. O. De C. No. 1" is a copy.

To the 17th he answers: Don't know of any amounts paid by Cain to said parties, except the amount paid me, which was $1,700.00.

To the 18th he answers: Fully answered by my answer to interrogatories 16 and 17 direct.

To the 19th he answers: Have answered this question by my answers in interrogatories 16 & 17 direct.

To the 20th he answers: I know nothing except that Fouke voluntarily informed me that he had private arrangements with Key; that was in the year 1875.
166 To the 21st he answers: Series of interrogatories were put to me by Mr. Davis, and I declined answering the same unless they should come from a court of competent jurisdiction, because they were impertinent questions. I had no correspondence or com-

munication with any one on the subject. My very limited correspondence with John J. Key was in regards to my interest in the proceedings of the Weil case.

To the 22nd *duty* he answers: I know nothing further.

Cross-interrogatories:

To the 1st X he answers: I have been in Savannah for the last eighteen months; my residence was known to the complainant in this case.

To the 2nd X he answers: Have no recollection of so doing.

To the 3rd X he answers: Have no recollection of so doing.

167 To the 4th X he answers: He never has.

To the 5th X he ans.: No.

To the 6th X he ans.: No.

To the 7th X he ans.: Never had any conversation with Key at that time.

To the 8th X he ans.: Cain was a member of the firm of James Marks & Co. I do not know whether Fouke was indebted to said firm or not.

To the 9th X he ans.: I did only with Cain.

To the 10th X he ans.: Do not know.

To the 11th X he ans.: I adjusted my case; know nothing about the other.

To the 12th X he ans.: I did. Don't know what the others did.

168 To the 13th X he answers: I never did.

To the 14th X he answers: Don't remember having received such information.

To the 15th X he answers: Know nothing about such copartnership, except what I have stated in direct interrogatory eleventh (11th).

To the 16th X he aswers: He has.

To the 17th X he answers: Yes, it was.

To the 18th X he answers: Not to my knowledge.

To the 19th X he answers: I know of my knowledge that after the award was made in favor of Weil assignments were made to each interested par*ties* respectively of the amount of fees which they were to receive.

J. O. DE CASTRO.

Answered, subscribed, and sworn to before me 10th day of April, 1883.

U. H. McLAWS,
*Commissioner* (*ss*).

169 *Def't's Testimony. Filed Mar.* 18, 1882.

In the Supreme Court of the District of Columbia. In Equity.

HENRY E. DAVIS, Adm'r,
*vs.*
JOHN J. KEY. } No. 7674.

Depositions of Robert A. Crawford and Edward Byrne, taken on behalf of defendant on this the 13th day of March, A. D. 1882, pursuant to agreement hereunto attached.

Present: Henry E. Davis, for pl't'ff; John Selden, for def't.

Taken at the office of John Selden, No. 1505 Pennsylvania avenue, in the city of Washington, D. C., before John J. Linney, notary public of said city and district.

JOHN J. LINNEY,
*Stenographer.*

Room 10 Corcoran b'ld'g, Wash., D. C.

170 In the Supreme Court of the District of Columbia. In Equity.

HENRY E. DAVIS, Ad'm'r, Complainant,
*v.*
JOHN J. KEY, Defendant. } No. 7674.

By consent of the parties to this cause the annexed depositions of Robert A. Crawford and Edward Byrne are this day taken on behalf of the defendant herein, *and* subject, nevertheless, to the objections taken and noted to the said depositions in the progress of the same, [and] are to be received and read as evidence in this cause in the same manner and with the same effect as if taken before one of the examiners of this court, under its special order in that behalf, in the regular progress of the cause.

HENRY E. DAVIS,
*Compl't, P. P.*
JOHN SELDEN,
*Solicitor for Defendant.*

171 ROBERT A. CRAWFORD, being duly sworn, testifies as follows:

By Mr. JOHN SELDEN:

Please state your name, age, place of residence and place of business, and your occupation.

A. I am over 60 years of age; a lawyer by profession, and am engaged in that business in the city of Washington at the present time, and have been since 1865, on "F" street, No. 1422; now at 1420.

Q. State whether you are acquainted with the defendant in this cause; and, if so, how long have you been acquainted with him?

A. Well, I could not say exactly; it has been a good many years.

Q. You are acquainted with him, however?

A. I have known him for years—since 1867 or 1868, perhaps 1865.

Q. State whether you have had any business acquaintance with him.

A. I have.

Q. When was your earliest business acquaintance with him and what did it relate to?

A. I think it was in reference to the prosecution of claims
172 against the government of Mexico.

Q. And before a tribunal of authority, where these claims against the government of Mexico were being prosecuted?

A. It was before a commission.

Q. At the time you thus formed the acquaintance of the defendant, with reference to the prosecution of Mexican claims, had you any one associated in business with you?

A. Yes, sir; Mr. A. M. Watterson.

Q. And in what connection and relation where you associated with him?

A. Mr. Watterson and I were partners in the prosecution of claims.

Q. And under the firm name of what?

A. Watterson and Crawford.

Q. What was the description of business in which you were engaged principally under that name?

A. Prosecution of claims against the Government, various claims before all the departments & Congress.

Q. And against the government of Mexico?

A. Oh, yes.

Q. What business relation, if any, existed between the defendant and your firm in reference to the prosecution of claims against the government of Mexico?

173 A. Well, after this commission was formed I had gotten up some claims and others applied to me. I gave a good deal of my time to it, as Mr. Waterson did not pay much attention to that class of business. Judge Key was at that time giving his special attention to these claims also, and I suggested that we take Judge Key into partnership in the prosecution of those cases. We had a great deal of business, and I gave a good deal of my attention to it, and he agreed to it.

Q. He did agree to it, did he?

A. Yes, and we entered into a partnership to give Judge Key one-half of all the claims prosecuted where he got judgments.

Q. Was this partnership or association between your friend Judge Key & yourselves limited to the prosecution of Mexican claims, or did it embrace your general business?

A. It was limited to Mexican claims alone.

Q. And under this arrangement or association did Judge
174 Key or did he not prosecute claims before that commission?

A. We certainly did.

Q. State if you please whether during his life-time you were acquainted with the late Philip B. Fouke.

A. I was intimately acquainted with Mr. Fouke, and make his acquaintance about 1868, I think—in 1868 or 1869, about that time.

Q. What facts, if any, can you call to mind relative to your first acquaintance with the late Colonel Fouke?

A. Well, I could not state at this time. He was some kind of a Treasury agent, and we met frequently and came frequently to my office. He had been living in New Orleans and had been to Mexico, I believe. In time it was suggested by Fouke and myself that we go into partnership in the prosecution of claims; that he would get them up and send them here and I should give my attention to them here and give Fouke half the fees for all he would get up and
175 keep the other half ourselves. Now, that was the first acquaintance we had.

Q. Then, as I understand you, about the time that you first formed the acquaintance of Col. Fouke, arrangements were suggested or made by which your firm and Mr. Fouke were to be associated in business to this extent: that he was to collect and send to you such claims against the Mexican government as would be prosecuted by your firm, and that the fees were to be divided between your firm and Fouke?

A. Yes, sir.

Q. Was this line of business actually conducted?

A. No.

Q. Why not?

A. Well, Colonel Fouke afterwards did not send the business and we dropped the matter.

Q. Did Mr. Fouke at any time afterwards explain or assign to you any reason for not sending the contemplated business?

A. He did.

Q. What reason did he assign?

176 A. He said Judge Key had been an old acquaintance and friend and that they had agreed to go into partnership—he and others with Judge Key—in the prosecution of Mexican claims or some kind of claims.

Q. In speaking of his association in the way of partnership with Judge Key for the prosecution of Mexican claims, did you understand the late Colonel Fouke to limit his proposed partnership to that particular class of business, or not?

Mr. DAVIS: I object, as that is leading the witness.

A. I think so.

Q. After this conversation with Mr. Fouke in his life-time, did you meet him again?

A. Oh, often; 500 times.

Q. What, if any, conversation had you at any time with Colonel Fouke in respect to the defendant or his business?

A. Well, I had frequent conversations with Colonel Fouke.
177 We were together in the same office. We had rented the office and sublet to them, and I saw Colonel Fouke daily and sometimes for a week at the time. He came into my office often and we had conversations about these Mexican claims, sometimes

in the presence of Judge Key and sometimes by ourselves. There was nothing secret about it. I believe Fouke said one day that Judge Key was so slow. He said yes; Key was such a slow man, and I will put into your hands the business I intend to throw into Key's hands. He said that Judge Key was a very slow man and had so many partners, and that he had more on his shoulders than he could ever kick off with his heels, and hence he, Mr. Fouke, said he had to drop some important business he had and give this business his personal attention. He said, "I have nothing to do with yourself and Watterson's business, but Key he takes his time and gets more partners, and I have to give up other business
178 that I ought to attend to and give my attention to this business." He said that frequently. If he said it once he said it 20 times.

Q. What description of business did Col. Fouke then refer to?

A. Exclusively to the Mexican claims; we had no other business with Key.

Mr. DAVIS: I object to so much of the answer of the witness as commences with the words "He had no other business," &c., to the end.

Q. How do you know he had no other business relations with Judge Key, except such referring to Mexican claims?

A. I do not know that. I do not know positively about that, but in speaking to me he said to me that he had nothing to do with the business of Watterson and Crawford—nothing whatever—and that he had to neglect other business to come here and give his personal attention to business that he and Key had, which referred to Mexican claims; further than that I do not know.

Q. State whether Fouke was at any time associated in the
179 prosecution of any other than the business of Mexican claims.

A. He had nothing to do with that business of ours; what business he and Key had I do not know exactly; our conversation was in regard solely to Mexican claims, and he had no other business with Judge Key except that.

Q. You may state whether Col. Fouke was at these times aware of the business relations existing between your firm and the defendant.

A. Yes; he was.

Q. Also state whether he was aware of this specific employment in which your firm and the defendant was associated.

A. Yes; he was and talked about it.

Q. You may state, if you please, if at any time you learned from Col. Fouke what the precise nature of his business relations with the defendant were; and, if you did, what were those relations?

A. Oh, nothing further than there was a partnership for the prosecution of claims against the Mexican government; his reasons for not complying with the written agreement entered into be-
180 tween us were that he and Key had entered into partnership from personal acquaintance and long friendship, and therefore he abandoned the written contract entered into between myself

and Watterson and entered into a contract with Key and sent him the claims in place of me.

Q. What, if any, business relations existed between Col. Fouke in his life-time and Harry T. Hayes, of Louisiana?

A. Well, I do not know really; I got it from Fouke that there was a partnership between him and Key and the whole of them; I never asked or cared specially about it. There was a firm of them; how it was I do not know certain.

Q. Are you and Mr. Watterson still prosecuting claims as partners?

A. No, sir.

Q. When did your relations as partners cease?

A. Some three or four years ago—four years, I think.

Q. You are still at the old place of business, are you?

A. Was there until last month; 1420, next door, is now my office.

181 Q. How is your place of business designated to the outside world?

A. By the same sign I have had for years—Watterson and Crawford; I was over ten years at 1422, and have now moved the sign from one door to the other.

Q. What, if any, connection or relation at this time had Col. Fouke with the General Government to your knowledge?

A. Well, he was an agent of the Treasury Department a while, and probably in the Internal Revenue Department a while, but how long I do not know; I know he was a custom-house agent, as I saw in New Orleans that he was connected with the custom-house.

Q. You may state, if you please, whether you ever learned from any statement ever made to you by Col. Fouke in his life-time the precise extent of his business relations and partnership with the defendant; whether those relations were general or special.

A. Now I gather from his conversations that they were
182 special. From what he said I cannot say positively, but from his conversation and talk about the business between him and Key I think it was limited.

Mr. DAVIS: I object to any opinion that the witness expresses.

Q. Limited to what?

A. To the Mexican claims.

Q. What was the conversation that passed between Fouke — yourself from which you gather this opinion or impression?

A. In speaking about the prosecution of claims *of claims* that Watterson and myself had in Judge Key's hands, Fouke took particular pains to say to me that he had nothing in the world to do with the prosecution of those claims that Watterson and I had in Judge Key's hands; that he himself had placed a large amount of claims in Judge Key's hands, and that he, Fouke, had to neglect other important business and come to Washington to assist Judge Key in the prosecution of those claims [to] exculpate himself; and he further remarked to me on two or three occasions that it
183 would have been better for him had he carried out the writ-

ten contract entered into between he and myself. That was just exactly the conversation.

Cross-examination by Mr. DAVIS:

Mr. Crawford, when did you take Judge Key into partnership?
A. I think some time in 1870, — early part of 1870.
Q. There was a written agreement, was there not?
A. Yes, sir, a written agreement.
Q. Have you it?
A. I have not.
Q. Do you know where it is?
A. I do not know; I thought I had it; I know I did have it, but I have dozens of papers, contracts with the quartermaster's and commissary department, &c., *that* I have mislaid it among these papers. After moving my office I had more tables than I wanted, and in changing about I mixed my papers up and mislaid them, and this contract with them.

Q. Have you made any effort to find it?

184 A. I have looked time and again; I know I have it somewhere, but I cannot find it; I know it was in the early part of the year 1870 I had it, but after removing and selling some tables the papers got all mixed up.

Q. Have you any means of fixing the date simply from memory with reference to the agreement?
A. I have not indeed; I came back from Mexico in 1870; my recollection is, in January, 1870.
Q. Was this agreement made before or after that?
A. After that.
Q. Was the agreement with Fouke made before that made with Key?
A. That was in 1869; I have that in my pocket. After that the contract was made with Judge Key; that I am certain of.
Q. I should like to see that agreement made with Fouke.

The witness here handed to Mr. Davis the paper referred to.

Q. Is this your signature of the firm-name of Watterson and Crawford?
A. That was written by Col. J. T. Pickett, who was a dormant partner.

185 Mr. DAVIS: I will offer this in evidence and ask the commission to make it a part of Mr. Crawford's testimony.

The paper is as follows:

WASHINGTON, D. C., *May* 1, 1869.

It is agreed between the undersigned that Watterson and Crawford are to attend to all business to be sent to them by P. B. Fouke, and that the profits on said business are to be equally divided between the parties to this agreement—that is to say, one-half to go to

Watterson and Crawford and the other half to go to P. B. Fouke, each party bearing its own expense.

(Signed) P. B. FOUKE.
WATTERSON & CRAWFORD.

March, 1870, cont. W., C., and K.

In duplicate. Exchangeably signed.

Endorsement on the back: "P. B. Fouke. Agreement. May 1, 1869."

Q. What explanation do you make of those additions to the bottom of the paper, namely, "March, 1870," &c.?

A. That was taken from the contract that Key and Watterson & Crawford entered into.

Q. Your recollection is that that is the date of the contract
186 between Watterson and *and* Crawford and Key?

A. Yes, sir; that is the date of contract between Fouke and Watterson and Crawford.

Q. You say that no business was done between Fouke and yourself under this agreement?

A. None whatever.

Q. And that he assigned, in explanation of that fact, the reason that he had entered into an agreement with Judge Key?

A. Yes, sir; he and others.

Q. Who were those others; do you know?

A. I would know the names if I were to hear them.

Q. You do not recollect them, then?

A. It seems to me some of them were Mexican names. I do not know them, but I would know them if I were to hear them.

Q. Did they open an office in this city?

A. I don't remember whether they did or not. Judge Key had an office, and so did Mr. Fouke. They had an office together, and we sublet to them.

Q. Was there any sign on the outside of the house indicating their presence within?

187 A. Yes; Fouke and Key is my recollection.

Q. You speak of a conversation with Col. Fouke in which he said that he had to drop important business in order to come to Washington to attend to matters which he left in Judge Key's hands. Do you recollect when that conversation took place?

A. Yes.

Q. When?

A. It was after we had gone into partnership with Judge Key—after Key and Watterson and Crawford entered into partnership, and during the prosecution of those Mexican claims.

Q. How long after the partnership between yourself and Judge Key?

A. I could not say. I do not know exactly. Fouke came here once or twice and went away, and then came and remained awhile and went away again.

Q. Was this after the partnership between yourself and Judge Key?

A. Fouke came here and then went to New Orleans and
188 stayed there a good while, and then came back and settled here; but the partnership was going on between he and Key *and Key* and myself when the conversations took place.

Q. You are sure it was after the inauguration of the Mexican Claims Commission and during the prosecution of business before it, are you?

A. Oh, yes; that brought it up; but the date I could not state.

Q. You never saw any other sign in which the names of Fouke and Key appeared, except that in which they appeared alone, did you?

A. Not that I know of.

Q. Judge Key and Col. Fouke had an office jointly in that same building with yours, did they?

A. Yes, sir.

Q. And they occupied the office together?

A. Occupied it together.

Q. Who paid the rent?

A. I do not know; I expect Colonel Pickett. I don't remember exactly. I hope so.

R. A. CRAWFORD.

Sworn to and subscribed before me this fifteenth day of March, 1882.

[L. S.] JOHN J. LINNEY,
*Notary Public.*

189 Edward Byrne, being duly sworn, testifies as follows:

By Mr. SELDEN:

Please state your name, age, place of residence, and your occupation.

A. Edward Byrne and I am 55 years of age; I am residing temporarily at No. 1019 "F" street, corner of 11th street, Washington, D. C.; I am following no business at all at present, as I have been quite an invalid here since December last.

Q. State if you knew the late Col. P. B. Fouke, and, if so, how long previous to his death, and what was the extent of your acquaintance.

A. I met him in Washington in 1866 for the first time, and afterwards was intimately acquainted with him; I was then in Washington here attending to the settlement of Col. Burbridge's accounts in the Treasury Department; at this time Fouke told me he had made some arrangements with the Treasury Department to establish a bounded warehouse, and he subsequently formed a copartnership with Mr. J. C. Forbes; and when I returned to New Orleans
190 I found the house was established under the firm-name of J. C. Forbes & Co.; from that period on my relations were very

intimate with Col. Fouke; living as I did in New Orleans we met constantly while there—he visiting my family and I visiting his.

Q. What acquaintance, if any, have you with the defendant, and, if any, of how long an existence, and of what degree of intimacy?

A. I met Judge Key first at his office on "F" street, when I presented a letter of introduction from Col. Fouke; I think this was in the year 1869, although I am not positive; since that time—on my return from Europe in 1874—I found that Judge Key had removed his office from "F" street to Pennsylvania avenue, near 4½ street; I made his office at the latter place my headquarters while in Washington, and through my intimacy with Col. Fouke I became intimate with Judge Key; in fact, I acted as amanuensis to both Fouke and Key, attending to their correspondence, &c., which intimacy exists with Judge Key up to the present time, and
191 with Col. Fouke up to the time of his death.

Q. Between the years 1869 and 1876 what, if any, business relations existed between yourself and Col. Fouke?

A. Well, in 1869 a gentleman by the name of J. C. McKibben, who now resides in Washington, had a contract to transport troops and supplies between New Orleans and Florida ports. I made an arrangement with him to accompany the ships, and I also made an arrangement at the same time, through the house of J. C. Forbes & Co., to supply me with such articles and commissary as I wanted—such as flour, tobacco, whiskey, etc. I was to act as general superintendent of the cargo, sell the goods, and we were to divide profits between us. It was during this period, or within that period of time, that I became acquainted intimately with Mr. Fouke, and our first business relations occur-ed about that time. I recollect that Mr. Fouke was frequently in the office of Hayes and New, lawyers, and, I having a son in their employ, I was also a frequent
192 visitor there, and Col. Fouke and I met nearly every day. He told me he was in trouble, having loaned money which he feared he was going to lose, and that he had then employed a lawyer whom he was afraid was misusing his trust. He requested me to take hold of his accounts as public administrator, fix them up, etc. During this time I wrote many letters at his dictation—among others, to Judge Key in regard to the prosecution of Mexican claims, when the testimony in the Weil and many other Mexican cases was being taken in New Orleans by Henry T. Hays.

Q. During what period was Mr. Fouke public administrator?

A. I think he received his appointment in 1870; I am not sure about it.

Q. And continued how long?

A. I think up to 1872; possibly 1873.

Q. He was public administrator of what?

A. Parish of Orleans, in Louisiana. He told me all about his trouble, stating that he had been indicted by the grand jury,
193 and that Kellogg, Warmouth, and other distinguished gentlemen, friends of his, were doing what they could for him. It was through Warmouth that he received his appointment. He came here to Washington afterwards, and subsequently separated

from Key's office and went into an office of his own, and when I returned from New Orleans I found Col. Fouke had removed his office on "D" street, running into Louisiana avenue, near the corner of 6th street.

Q. What time was it that Fouke thus opened a new office for himself?

A. It was during some period while I was absent from Washington. I was constantly traveling between the South and Washington and New York.

Q. Can't you fix the date?

A. I cannot fix the exact date. I was with him up to the time of his death in 1876, and presume he went to that new office on "D" street in 1875. He explained to me that a man by the name of Orendorff made him an offer of that place and that he accepted.

Q. While Col. Fouke was public administrator of the parish of Orleans where did he reside?

194 A. He resided the most part of the time in New Orleans.

Q. During any part of that period did he reside in Washington?

A. I do not know. I was travelling constantly. I had a great many internal revenue cases in Mississippi, and was employed by the bondsmen to come to Washington relative to that business.

Q. Can you state whether during the period that Col. Fouke was public administrator you met him here in Washington?

A. I do not think I ever did meet him here while he was public administrator. I do not remember distinctly about it, but I don't think I did.

Q. You may state if you please what relations or business, to your knowledge, existed between the defendant and Col. Fouke after the latter was appointed public administrator.

A. I merely knew the general fact that Col. Fouke and Judge Key had a partnership in the prosecution of claims before the Mexican joint commission; that Col. Fouke obtained some cases in the city of New Orleans and forwarded them here to Washington, with

195 the evidence, to Judge Key; that was what I understood to be the relation existing between Col. Fouke and Judge Key whilst Fouke was public administrator.

Q. And in the prosecution of these claims were the defendant and Fouke alone interested as partners?

A. No; because in the Weil case Harry Hayes, New, and De Castro were interested. New was interested as partner of Hayes.

Q. Now you may state, if you please, what information you received at any time from Col. Fouke touching the business of partnership relations which existed between himself and the defendant?

A. Without being able to recur to any distinct conversation, there was an impression left on my mind from frequent conversations about his profit in the business that he had sent cases to Judge Key to be prosecuted before the Mexican commission, in which they were jointly interested.

Mr. DAVIS: I object, as the answer is merely the impression of the witness.

(The witness resuming.) That is my impression. As to recalling particular conversations, I cannot do it.

196 Q. How frequently did conversations pass between yourself and Col. Fouke touching business relations with the defendant, Hayes, and De Castro?

A. Well, the employment of Hayes was made at the investigation of Col. Fouke, because he was a distinguished member of the bar, and supposed to be a most excellent man; De Castro was employed on account of speaking Spanish and specially to send to Mexico for the purpose of getting evidence. It was, as I understood it, that Hayes, New, and De Castro were each to receive a certain amount—I do not know the specified amount—and that they were with Judge Key to divide the profits.

Q. You may state, if you please, whether to your knowledge, on any occasion, any difference of opinion or discussion arose between the defendant and Col. Fouke, in his life-time, touching the business in which they were supposed to be mutually interested, and if so what was the precise nature?

A. I remember a particular occasion of dispute between Judge Key and Col. Fouke very well relative to the fees in some

197 particular case. What the particular case was I do not remember now, but the controversy was ended by Col. Fouke suggesting that I take down on a piece of paper all the cases in which they were interested together, and that Judge Key produce his large account book, which he did. They then sat down together at one desk, and I at another, and they called off specific cases in which Col. Fouke was interested with Judge Key, and my recollection is that the memoranda which I made was compared with the entries in the book, and to their mutual satisfaction. That is the only occasion in which I know of any controversy.

Q. In what year was that?

A. That I am unable to specify, but I think it was either in 1873 or 1874, when they occupied the office together on Pennsyvania avenue, near 4½ St.

Q. Are you able to state with precision or certainty whether this was before or after Col. Fouke was appointed public administrator?

A. Subsequent to that, after the award was made in the Weil case. The reason I state that distinctly is from the fact that

198 one afternoon I went into the office and found on the desk of Judge Key a note stating that the award had just been made in the Weil case for so much. Hurrah! That was about the period of time in which this controversy arose that I have just been speaking about.

Q. Do you know whether any adjustment, as between Col. Fouke and the defendant, or any other associate in point of interest as counsel in the Weil case, was made during the life-time of Col. Fouke?

A. Yes, I remember that with great distinctness, because Harry Hayes came on here specially for that purpose. Boynton, Hayes, and De Castro were interested parties in the Weil case and were employed by Benjamin Weil. We met at Willard's Hotel and I was

informed by Boynton and Fouke that they had come to an amicable arrangement and that the interest of each party was segregated and specified in the amount that each was to receive.

Q. Are you positive in your recollection that this information was communicated to you directly by Col. Fouke himself?

A. Oh, yes; I think I remember it quite distinctly.

199 Q. You may state, if you please, what, if any, further conversation took place respecting this arrangement and segregation of particular interest of counsel in the award was communicated to by Col. Fouke at any subsequent time.

A. There were many conversations between Col. Fouke and myself in regard to the interest that accured to him by this settlement, because he was very much harassed and worried by these claims of creditors *of* in New Orleans growing out of his administration of the affairs of public administrator. There was a lawyer in New Orleans who knew all the facts touching this Weil case, and who knew that Fouke was to receive a large amount of money from this award, and urged him with great pertinacity of purpose for a settlement of the cases of the creditors which he represented, and Fouke advised with me upon the subject as to what he should do in order to save as much as possible of the money he was to get out of the Weil case. He was unable to pay all the creditors, but in order to pacify this

200 lawyer he informed him, against my advice, of the amount coming to him (Fouke) out of this case in order to excite his sympathies by showing a disposition to pay all he could afford in the adjustment of his New Orleans business.

Q. What, if anything, did Mr. Fouke say to you as to the extent of the interest which he had in the Weil case after this arrangement was made at Willard's Hotel?

A. I do not recollect. The arrangement was based upon a certain percentage subsequent to that time—long after Col Fouke's death, or rather a little before it. I ascertained that he was to receive 8⅓ per cent.; Hays 8⅓ per cent., and De Castro 8⅓ per cent., or 25 per cent. between them; Judge Key was to receive, I think, 25 per cent. or something like that; I did not charge my memory with it; I was under the impression that it was a large amount of money.

Q. After this arrangement was made at Willard's Hotel did you hear from Col. Fouke the precise percentage he was entitled to receive?

A. I cannot remember; it is probable I did, but I do not

201 now remember; it is quite probable he told me the amount.

Q. I don't mean the amount in dollars, but in percentage.

A. I know what you mean, but do not recollect.

Q. What other interests, to your knowledge, did Col. Fouke claim, after the arrangement at Willard's Hotel, in the Weil award?

A. Never any other. He never mentioned any other claim.

Q. Did he express to you what his claim was?

A. He expressed himself generally that everybody was satisfied with this settlement at Willard's Hotel and with the amounts specified in that agreement. There appeared to be some apprehensions

on the part of various parties that this man, L. B. Cain, might not agree to the arragements made under the power of attorney made by Weil.

Q. Did you ascertain at any time from Mr. Fouke whether the arrangement thus made at Willard's Hotel had been made for the purpose of adjusting the rights of the parties as counsel be-
202 tweeen themselves or for the purpose of adjusting matters as between themselves, on the one hand, and Cain, on the the other?

A. Well, in regard to that, my recollection is, as I have said before, there seemed to be some apprehension that Cain, the attorney for Weil, might not be satisfied with the arrangements that were made between counsel. For instance, Fouke, under the arrangement, employed Boynton, to which I understood Judge Key objected, and I understood at the time that some objection was made to the employment of Boyce by Judge Key, but that when the parties met at Willard's Hotel for the purpose [of] getting at an exact segregation of every one interested, based upon the net award of Mexican commission, and at the conclusion of the agreement, all the parties that I saw and conversed with, particularly Hays and Fouke, seemed to be entirely satisfied with the arrangement.

Q. And this you learned from Col. Fouke yourself?

A. This I learned from Fouke and Hayes.

203 Q. Is there anything else of consequence in this case that now occurs to you?

A. I do not think there is.

Q. During all these years you were on terms of great confidence and intimacy with Col. Fouke, were you?

A. I suppose for some time prior and up to the hour of his death I was more familiar with the business of Col. Fouke than anybody else.

Q. And upon terms of confidence?

A. I was called by Mrs. Fouke at the family meeting her-, when they desired me to give them what information I could of Mr. Fouke's affairs after his death. I then suggested that perhaps there was some of his money in the Bank of Washington in this city, and by accident there happened to be $100 of Mr. Fouke's money there. Then I gave information concerning a number of transactions he had been engaged in—one particular transaction where he was employed by railroads in Louisiana, &c., &c. I held very confidential relations with him up to the time of his death.

Q. Well, after Col. Fouke went into this office by himself
204 on "D" street and Louisiana avenue, near 6th street, did he, to your knowledge, prosecute any claims or transact any partner business as a lawyer in which the defendant did not share or co-operate with him?

A. Well, I always thought that Col. Fouke was rather incapacitated from attending to business by his *having* drinking. Judge Key was constantly in Fouke's office. I know that there was a case that Fouke was attorney in. A man by the name of Borer had a

claim against the Government in Fouke's hands, and Fouke stated to me that Judge Key had no interest in it.

Q. In speaking of the presence of Judge Key at the new office of Col. Fouke on "D" street and the intercourse there conducted between them, what was the character of the same?

A. Very agreeable and pleasant—most amicable.

Q. And had nothing to do with business matters?

205 A. No allusion was ever made to business in my presence. Judge Key dropped in often, and they talked about politics and other like subjects.

Q. A mere wor-dly intercourse, and no reference to business?

A. No business relations whatever.

Cross-examination:

By Mr. DAVIS: When did you first know that Col. Fouke had an office on "D" street, near Sixth?

A. I do not remember.

Q. Can you approximate it?

A. I arrived in Washington from New Orleans and found Fouke at that office, but what year was it I do not know; I think it was along about 1875.

Q. Had Judge Key any office at that time, to your knowledge, other than the one Fouke occupied?

A. That I do not know.

Q. There was nothing in Col. Fouke's occupation as public administrator of the parish of Orleans that prevented him from leaving the city of New Orleans from time to time?

206 A. I do not know and cannot state. He being the public administrator, and people constantly dying, their estates were in his hands, and I think this required his presence in New Orleans all the time; but I do not know these facts specifically.

Q. Do you not know the fact that frequently he had business in this city which required his attention during his term of office?

A. No; I do not know that.

Q. You have spoken of a dispute between Col. Fouke and Judge Key as to counsel fees or Col. Fouke's interest in *in* a certain case, and you fix the date of that dispute subsequent to the rendition of the award in the Weil case. Do you remember about what particular case the dispute arose?

A. No; I do not.

Q. You say that a memoranda was made setting forth such of the cases in which they were jointly interested. Do you remember whether or not that memoranda contained the same of the Jonas Marks & Co. case of New Orleans?

A. I cannot recollect.

207 Q. Do you remember that the case of Jonas Marks & Co. was before the Mexican commission?

A. No, sir.

Q. Do you know Cain?

A. Yes.

Q. When did you first know him?

A. Subsequent to the award.

A. Did you know that he was a member of the firm of Jonas Marks & Co.?

A. I did not.

Q. Do you know how that dispute arose between Col. Fouke and Judge Key?

A. I remember distinctly that there was some dispute between Fouke and Judge Key, and Col. Fouke said that they had better come to some understanding about his interest in some of the cases. Key says, I have no objection, and then I put down on a slip of paper the cases in which they were jointly interested, and they were both satisfied with the result.

Q. It was not the Weil case?

A. No; some small case; there was quite a number in which theo were jointly interested—probably fifty.

Q. What claim did Col. Fouke set up as to his interest?

208 A. One of the particular cases in which he was to receive equally with Key a part of the award. There was quite a number of cases then pending before the commission.

Q. What did Judge Key reply to that?

A. Judge Key replied, I have no objection to having the cases all put down.

Q. But didn't he deny that Col. Fouke was interested in that particular case?

A. At first he did, and then he said it was a small matter and he had no objection to his receiving a percentage.

Q. Where did this dispute occur?

A. At their office on Pennsylvania Ave., near 4½ street. I think it was subsequent to the Weil award, or some time thereabouts, at any rate.

Q. You have spoken of some settlement in which Cain, Boynton, and Boyce, Fouke, Hayes, and De Castro were partners; was that agreement in writing, do you know?

A. So I understood.

Mr. DAVIS: I here enter objection to all testified to by the
209 witness with reference to that agreement, because it appeared for the first time in this examination that that agreement was reduced to writing.

Q. I understood you to say that Col. Fouke had interested Boynton in this claim of Benj. Weil in some way, and that in some way Mr. Boyce had become interested in the claim, and that those facts it was feared would create some difficulty in arriving at a settlement with Mr. Cain, who represented the interest of Benjamin Weil; is that right?

A. Yes, sir.

Q. And Col. Fouke, after the agreement was entered into, represented to you his gratification at the result which had been attained?

A. Yes. All the parties that I spoke to—Boynton, Fouke, Harry Hayes—expressed themselves satisfied at having the matter definitely fixed.

Q. Do you know whether that agreement was ever placed on record?

A. Well, I only knew it from hearing Boynton speak of it, because some record was made in his special case; that his case was segregated from the others, and Cain could not collect it.

210 Q. Do you recollect in what year that settlement was made?

A. No, I do not.

Q. Col. Fouke, as I understand, was a defaulter in his office of public administrator?

A. Yes; a large defaulter.

Q. And you say that some New Orleans lawyer was here prosecuting him?

A. No; was in New Orleans.

Q. Well, some New Orleans lawyer attempted to make some arrangement with Col. Fouke by which certain of his creditors might be satisfied whom this lawyer represented, and that Col. Fouke informed this lawyer of the agreement that had been entered into between all the parties interested; is that right?

A. No; I did not state that. I said against my advice Col. Fouke had written that he was to receive money for cases pending before the Mexican commission, and as soon as he did receive the monies he would pay as nearly as he could all his New Orleans indebtedness.

Q. Did he make any particular reference to the Weil case?

A. Yes, sir.

211 Q. And that was subsequent to the entering into this agreement with all the parties?

A. Oh, yes; that was after he had been indicted by the grand jury in New Orleans.

Q. When was he indicted?

A. I do not know; he had many friends there and it harrassed him very much; he owed board bills and individual indebtedness too, and those things, together with his drinking, perplexed his mind and made him *non compos mentis*.

Q. Was Col. Fouke largely in debt at the time of his death?

A. So I understood.

Q. You spoke of John C. Forbes and you spoke of Col. Fouke being a silent partner in his house in New Orleans?

A. Yes.

Q. Do you remember of Forbes and Fouke going on the bond of one Burbridge?

A. I do not know the fact, but I know that Col. Fouke was very intimate with Mr. Burbridge, and Forbes would do any-

212 thing that Col. Fouke did, for he was a mere figure-head in the firm; Fouke was the man who supplied the capitol and started the business.

Q. Don't you know that Burbridge was a Treasury agent in Kentucky and that he proved a defaulter to the Government, and that

Forbes and Fouke were among his bondsmen; that suit was brought against them in the circuit court of the United States in Kentucky and judgement rendered against them for the sum of $30,000?

A. I remember this fact: that I was employed by Burbridge to come on to Washington for the purpose of adjusting his affairs before the Department; I was employed upon the recommendation of a Mr. Stewart, who was his lawyer; I came on here, made up the accounts with the Treasury Department at the time McCollogh was Secretary, and instead of owing the Government money his account showed that the Government owed him money, and suit was instituted in Kentucky, because that was the place of residence of Col. Burbridge, and Bristow, who was subsequently Secretary, was his attorney.

213 Q. Aren't you mistaken about Bristow being his attorney?

A. No.

Q. Wasn't he, in fact, United States attorney?

A. No; he was employed by Burbridge, because subsequent to that, when Bristow became Secretary, I urged upon Burbridge to have the settlement with the Department here while Bristow was Secretary of the Treasury.

Q. You remember, however, that judgment was rendered against Burbridge?

A. Yes, but the amount I do not remember.

Q. Was it ever paid by him?

A. I do not think he did, because he had nothing to pay it with, but some of the bondsmen did.

EDWARD BYRNE.

Sworn to and subscribed before me this seventeenth day of March, 1882.

[L. S.] JOHN J. LINNEY,
*Notary Public.*

214 DISTRICT OF COLUMBIA, } ss:
*Washington County,* }

I, John J. Linney, a notary public in and for the district and county aforesaid, and at the time and place aforesaid in the beginning of this deposition, do hereby certify that Robert A. Crawford and Edward Byrne, witnesses on behalf of the defendant in the above-entitled cause, were by me duly sworn to tell the truth, the whole truth, and nothing but the truth relative to the said cause, and that the questions put to and answers of said witnesses were taken down by me; that the deposition of each of them above set forth was read by me to each [of] them, and by each of them signed before me at the times hereinbefore set forth.

In testimony whereof I have hereunto set my hand and notarial seal this 17th day of March, 1882.

[L. S.] JOHN J. LINNEY,
*Notary Public.*

NOTE.—Notary fee for above testimony, 2 days @ 5.00, $10.00.

J. J. LINNEY,
*Notary Public.*

215 *Reference to General Term.. Filed April* 13, 1883.

In the Supreme Court of the District of Columbia.

HENRY E. DAVIS, Adm'r, Compl't,
*ag'st*
JOHN J. KEY, Def. } Eq. No. 7674.

It is this 13th day of April, 1883, ordered that this cause be, and it hereby is, certified to the general term, there to be heard in the first instance, the record to be printed and filed for the purpose by the complainant.

By the court:

D. K. CARTTER,
*Chief Justice.*

216 *Decree in General Term. Filed July* 2, 1883.

In the Supreme Court of the District of Columbia. In Equity.

HENRY E. DAVIS, Adm'r, &c.,
*vs.*
JOHN J. KEY. } No. 7674.

This cause came on to be heard in general term in the first instance, and was argued by counsel, and thereupon it is this 2nd day of July, 1883, ordered, adjudged, and decreed that the complainant's bill be, and it is hereby, dismissed with costs, and from this decree the complainant in open court prays an appeal to the Supreme Court of the United States, which is allowed.

217 *Appeal.*

In the Supreme Court of the District of Columbia the 25 day of September, 1883.

HENRY E. DAVIS, Adm'r, &c.,
*vs.*
JOHN J. KEY. } No. 7674.

Know all men by these presents that we, Henry E. Davis and Henry S. Davis, are bound unto the above-named John J. Key in the sum of two hundred and fifty (250) dollars, to be paid to the said John J. Key, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 25 day of September, 1883.

Whereas the above-named Henry E. Davis has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Henry E. Davis shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea,

then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) HENRY E. DAVIS. [L. S.]
HENRY S. DAVIS. [L. S.]

Sealed and delivered in presence of—
R. J. MEIGS, JR.

Approved Sept. 25, 1883.
(Signed) D. K. CARTTER,
*Chief Justice.*

218 AUTHENTICATON OF RECORD.

*Clerk's Certificate.*

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 25th day of September, 1883.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
*Assistant Clerk.*

*Justice's Certificate.*

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 25th day of Sept., 1883.

D. K. CARTTER, [SEAL.]
*Chief Justice.*

*Clerk's Certificate to Justice's Official Character.*

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 25th day of September, 1883.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
*Assistant Clerk.*

Endorsed on cover: Dist. of Columbia supreme court. No. 60. Henry E. Davis, administrator *d. b. n.* of Philip B. Fouke, deceased, appellant, *vs.* John J. Key. Filed September 25, 1883.

123-79

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JAMES. H. McKENNEY.
CLERK.

# Supreme Court of the United States.

**OCTOBER TERM, 1887.**

*No. 7.*

HENRY E. DAVIS, *Ad'r d. b. n.* OF PHILIP B. FOUKE, DECEASED, APPELLANT,

*against*

HETTIE ANN KEY, EXECUTRIX OF JOHN J. KEY, DECEASED, APPELLEE.

**BRIEF IN BEHALF OF THE APPELLANT.**

HENRY E. DAVIS,
*Appellant.*

JUDD & DETWEILER, PRINTERS.

# Supreme Court of the United States.

**OCTOBER TERM, 1887.**

*No. 7.*

HENRY E. DAVIS, *Ad'r d. b. n.* OF PHILIP B. FOUKE, DECEASED, APPELLANT,

*against*

HETTIE ANN KEY, EXECUTRIX OF JOHN J. KEY, DECEASED, APPELLEE.

## BRIEF IN BEHALF OF THE APPELLANT.

### I.

STATEMENT OF THE CASE.

This is a suit in equity originally instituted by the appellant, in the supreme court of the District of Columbia, against John J. Key, for the purpose of obtaining a general accounting in relation to a partnership claimed to have existed between the said Key and one Philip B. Fouke, the appellant's intestate. Practically the litigation has been directed mainly to the obtaining an accounting in respect to the fees received by Key in the case of Benjamin Weil *vs.* Mexico, hereinafter mentioned. Since the appeal to this Court, Key has died, and his executrix, the appellee, has become party to the cause in his stead. The facts of the case are as follows:

By convention between the United States and Mexico of July 4th, 1868, a commission was created, and from time to time continued and extended, for the adjudication of claims of citizens of each country against the other. (15 Stat., 679; 17 do., 861; 18 do., 760, 833; 19 do., 642.) This Commission, commonly known as the "Mexican Commission," began its sessions on July 31, 1869, the Commissioners completed their work on January, 31, 1876, and the Umpire completed his on November 20 following. The aggregate of the awards made by the Commission to citizens of the United States (less the aggregate of awards to Mexican citizens and certain expenses) is paid in annual installments to the United States Government. (19 Stat., 644.) By act of Congress of June 18, 1878, (20 Stat., 144,) the Secretary of State was designated to receive and distribute the amounts payable to United States claimants, and before that date no payments to claimants had been made. (Rec., 1, 22.)

For the purpose of prosecuting claims before this Commission, Fouke and Key, together with one Hays and one De Castro, on August 10, 1869, made and entered into the following agreement (Rec., 1–2, 7, 22, 55):

*Articles of Copartnership Entered into Between John J. Key, of the City of Terre Haute, State of Indiana; Philip B. Fouke, now of the City of New Orleans, State of Louisiana; H. T. Hays and Jb De Castro, both of the City of New Orleans, State of Louisiana.*

It is agreed between said parties that a copartnership is this day formed between them for the purpose of prosecuting claims in behalf of the citizens of the United States of America against the Government of Mexico, and of the citizens of the Government of Mexico against the Government of the United States of America.

It is agreed between said parties that the said Fouke, Hays & De Castro shall procure claims of citizens of the respective Governments named against the other and attend to taking the necessary proof; and that the said claims shall be sent to said Key, at Washington city, accompanied with

a power of attorney from the claimant, authorizing said Key to prosecute said claims, and authorizing him to receive from said Governments any and all amounts that may be due and coming to them.

That said Key shall retain all fees as agreed on by said parties, and shall pay over to said parties, acting in the capacity of special attorneys for that purpose of the claimant, the amount due to them as such special attorneys, both for the amount awarded the claimant and for fees due Hays, Fouke & De Castro in the case, either at Washington, New York, or New Orleans, as he may be directed, from time to time, by either Hays, Fouke or De Castro, acting as the special agent of claimant, whose power as such in all cases sent by them is, to all intents and purposes, recognized by the parties to this contract.

The said Key shall retain in all cases where no special direction is given the portion due to said firm, paying over to the other parties at once, or accounting in such manner as they may, from time to time, direct, for the proportion of the fees so retained.

It is agreed that all fees received under this copartnership shall be divided—one-half part to said Key, the other half to said Fouke, Hays & De Castro.

Said Key is to remain at Washington city, said Hays at New Orleans, said De Castro to be in the City of Mexico, and *said Fouke is to render his services wherever they shall be needed.*

In witness whereof we have hereunto set our hands and seals this tenth day of August, 1869.

(Signed by all the parties.)

A few weeks later, on September 24th, 1869, Fouke and Key (privately, as will hereafter appear), entered into the following agreement. (Rec., 2, 8, 22–3.)

*Articles of Copartnership Entered into Between Philip B. Fouke and John J. Key.*

It is agreed between said parties that a partnership be this day formed between them for the purpose of practicing law in the city of Washington, District of Columbia, and that partnership shall be equal.

It is agreed that each party shall give their undivided attention to the business, and that said business embraces all matters pertaining to the profession of the law, including prosecution of claims against the Government of the United States, either before Congress or the Court of Claims. Neither party shall have the right to use the name of the firm, except in such matters as pertain to the business of attorneys.

It is understood and agreed that all sums received by said Key or Fouke, under an agreement of partnership heretofore formed by said Key, Fouke, H. T. Hays, and J. O. De-Castro, shall be equally divided by said Fouke and Key.

It is agreed that an account of expenses shall be kept between said parties pertaining to their business (except that part in prosecuting claims under the treaty of July 4th, 1868, between the United States and Mexico), and all sums received by either partner from their business, and all sums retained by either party shall be entered on a book kept for that purpose, and the same shall be subject to the control of both.

It is agreed that this copartnership shall continue until the 24th day of September, 1871, unless dissolved by mutual consent.

In witness whereof we have, this 24th day of September, 1869, hereunto set our hands and seals.

(Signed by both.)

Fouke, Hays and De Castro sent to Key, from New Orleans, for prosecution before the Commission (Rec., 2–3, 27), the now well-known claim of one Benjamin Weil, which was filed on March 12, 1870 (a more complete memorial or petition being filed, however, on the 27th April following), and an award whereon was rendered by the Umpire on October 1, 1875 (Rec., 27), and duly entered on the records of the Commission on November 29 of the same year. (Rec., 2–3, 27–8.)

Similarly a claim of Jonas Marks & Co., of New Orleans, was sent to Key and prosecuted to success before the Commission. (Rec., 3, 5, 27–8, 29–31.)

These two claims came within the provisions of the agreement of August and stood on the same footing as to partici-

pation by the four parties in any fees to be received on account thereof. (*Ibid.*, Rec., 55–6.)

Before the making of the award on his claim, to wit, before October 1, 1875 (Rec., 27), Weil became and was adjudged insane; his wife was duly constituted his *curatrix* or committee, and she duly appointed one Cain her attorney-in-fact in and about the said award and the interests of Weil and herself therein. (Rec., 3, 28.)

In the interim between the adjudication of Weil's insanity and the entry of his award on the records of the Commission, to wit, on November 5, 1875, the following memorandum was executed (Rec., 3, 9, 27):

*Agreement.—Recorded November 6th*, 1875.

L. B. CAIN, Att'y, with SYLVANUS C. BOYNTON *et al.*

This agreement, made and entered into in the city of Washington, D. C., between L. B. Cain, of the city of New Orleans, State of Louisiana, attorney-in-fact of Alice Weil, for herself and curatrix of Benjamin Weil, her husband, a person of unsound mind, who was so declared to be, by an order of the second district court of the parish of Orleans, in the State of Louisiana, and in proceeding before said court, the law of the State of Louisiana having been fully complied with, the said Alice Weil was appointed curatrix of her interdicted husband, Benjamin Weil, above named, on the 20th day of August, 1875, and an authenticated copy of the proceedings of the said second district court for the parish of Orleans, in the matter of the interdiction of Benjamin Weil, No. 38115, is made a part hereof and attached to this instrument of writing, of the *first* part, and Sylvanus C. Boynton, of the city of Washington, D. C.; Harry T. Hays and Jacob O. De Castro, of the city of New Orleans; Phillip B. Fouke and John J. Key, now residents of the District of Columbia, and W. W. Boyce, attorney-at-law, of Washington, D. C., of the *second* part.

Whereas, Benjamin Weil, in the year eighteen hundred and sixty-nine, filed a claim before the American and Mexican Joint Commission, then in session in the city of Washington, D. C., United States of America, under a conven-

tion between the United States of America and Mexico, of July 4th, 1868, for the sum of $334,950 (three hundred and thirty-four thousand nine hundred and fifty dollars); and whereas said case was tried and heard before said Commission; and whereas an award has been rendered by the Umpire and returned to the secretary of said Commission to be finally entered on the records of said Commission for the sum of $285,000 (two hundred and eighty-five thousand Mexican gold dollars), with interest at six per cent. per annum from the 20th of September, 1864, to the date of the final close of said Commission;

And whereas on the 15th July, 1874, the said Benjamin Weil appointed the said Philip B. Fouke his attorney, and authorized the said Fouke to pay, pledge, or hypothecate any portion of said claim to defray expenses, fees, and other moneys expended, laid out, or appropriated, not to exceed the sum of one hundred thousand dollars ($100,000); and whereas the said Fouke employed the said Sylvanus C. Boynton, Esq., and agreed for and on behalf of said Weil to pay said Boynton the sum of $59,561 (fifty-nine thousand five hundred and sixty-one dollars), to be deducted from the aggregate amount which might be found due at the close of the Commission;

And whereas for the purpose of executing said agreement made by said Fouke with the said Boynton, under and by authority of said Weil, I, L. B. Cain, as attorney-in-fact of Alice Weil, for herself and as curatrix of the said Benjamin Weil, assign and transfer to the said Sylvanus C. Boynton the sum of $59,561 (fifty-nine thousand five hundred and sixty-one dollars) of said award, which said sum is to be deducted from the entire amount of the $285,000 (two hundred and eighty-five thousand dollars), with interest from 20th of September, 1864, until the close of this Commission, as will fully appear by the records of the case before said Commission, and it is expressly understood that the said S. C. Boynton shall have a lien of said amount of $59,561 (fifty-nine thousand five hundred and sixty-one dollars) on said award. The power of attorney from Benjamin Weil to Philip B. Fouke is make part hereof and attached hereto; and whereas on the 10th September, 1869, the said B. Weil executed a power of attorney to John J. Key, a true copy of which is made part of this agreement and attached hereto; and whereas, on the 10th day of September, 1869, the said B. Weil executed the following agreement:

Whereas on the 10th day of September, eighteen hundred and sixty-nine, in the city of New Orleans, parish of Orleans, State of Louisiana, I executed an irrevocable power of attorney in favor of John J. Key, authorizing and empowering the said John J. Key to prosecute before the American and Mexican Joint Commission my claim in the sum of three hundred and thirty-four thousand nine hundred and fifty dollars, under the convention between the United States of America and Mexico of July fourth, eighteen hundred and sixty-eight, now, know all men by these presents, that for and in consideration of the legal and professional services heretofore rendered and hereinafter to be rendered by my said attorney, the said John J. Key, that I have this day agreed to pay, and am firmly bound, and hereby oblige myself to pay J. J. Key and H. T. Hays a sum equal to one-half of the amount recovered.

Witness my hand and seal this tenth day of September, eighteen hundred and sixty-nine.

(Signed) B. WEIL.

Witnesses:

OTTO OPPERMAN.

GEORGE STEHL.

And the same is made part of this agreement and the original attached hereto. Whereas the said B. Weil agreed to pay to J. J. Key and H. T. Hays one-half of the amount recovered, now, for the purpose of executing said agreement, I hereby transfer to the said John J. Key, after deducting the sum of ($59,561) fifty-nine thousand five hundred and sixty-one dollars from the aggregate amount of said finding at the close of said commission, one-fourth of said award, amounting at $——, at the close of said commission, it being understood that said Key is entitled to one-fourth of said award, subject to the amount heretofore deducted, and it is agreed that the said John J. Key shall have a lien to the extent of one-fourth of said award with full authority and power to control the same.

Whereas Harry T. Hays, Philip B. Fouke, and Jacob O. de Castro are equally interested in the one-fourth of said award coming to said H. T. Hays, by the agreement heretofore referred to. And whereas by the consent of said H. T. Hays and by his direction I subdivide the amount due him under said agreement into three parts, and I hereby assign

to the said Harry T. Hays (8⅓ per cent.) eight and one-third per cent. of said award, and to Jacob O. de Castro (8⅓ per cent.) eight and one-third per cent. of said award, and to Philip B. Fouke (8⅓ per cent.) eight and one-third per cent. of said award, which three amounts make the (25 per cent.) twenty-five per cent., which is due to Harry T. Hays under said agreement, this is done by the express directions of the said Harry T. Hays, and the said parties are to hold their interest in the same manner as the said John J. Key holds his interest.

Whereas Benjamin Weil employed W. W. Boyce as assistant counsel, and agreed to pay him seven and a half per cent. of the award that might be made in his favor. And whereas said Boyce has agreed to modify his agreement and receive as his fee five per cent. instead of seven and a half per cent. And whereas it is understood that the said sum of ($59,661) fifty-nine thousand five hundred and sixty-one dollars is first to be deducted from the aggregate amount of said award, I hereby transfer and assign to the said W. W. Boyce (5 per cent.) five per cent. of said award, in conformity with the foregoing agreement, as modified by the said W. W. Boyce, and the said Boyce is to have a lien on said award in the same manner as the said H. T. Hays, J. O. de Castro, Philip B. Fouke, John J. Key, and S. C. Boynton.

In witness whereof the said L. B. Cain, as attorney for Alice Weil, and as attorney for Alice Weil, curatrix of Benjamin Weil, hath hereunto set his hand and affixed his seal at Washington, District of Columbia, on the fifth day of November, A. D. eighteen hundred and seventy-five; and in witness whereof the said Sylvanus C. Boynton, John J. Key, Philip B. Fouke, Harry T. Hays, Jacob O. de Castro, and W. W. Boyce have hereunto set their hands and seals this fifth day of November, A. D. eighteen hundred and seventy-five.

[Signed, sealed, and acknowledged by all the parties.]

Weil died in 1877, and on June 23, 1880, Cain, for Mrs. Weil, who had duly become her husband's successor, executed to Key (Fouke having in the meanwhile died), an assignment of the share in the award which had been allotted to him, Key, by the memorandum of November 5, 1875, and Key thereafter collected and received the ratably proportion-

ate sum of the amounts (being five instalments), paid in 1880 and 1881 on account of the award. (Rec., 3, 4, 27, 29.) Fouke in his lifetime received nothing, and the appellant has received only eight and one-third per cent. of the fifth instalment paid on account of the award. (Rec., 4, 29.) Other instalments of the award, amounting to about $300,000, remain to be paid. (Rec., 3, 27.)

Fouke died October 3, 1876; his widow was appointed his administratrix; and afterwards, to wit, on December 10, 1876, removed; and on December 13, 1876, the appellant duly became his administrator *de bonis non.* (Rec., 5, 31.)

The bill of complaint was filed April 13, 1881. (Rec., 1.) On June 7, 1881 (Rec., 22), Key answered, denying his liability to account. Replication to the answer was made June 16, 1881. (Rec., 33.) On July 2, 1883, the court below dismissed the bill, and appeal was taken in open court. (Rec., 75.) The court, in dismissing the bill, rendered an oral opinion, holding in effect that the rights of the parties were adjusted and to be determined by the memorandum of November 5, 1875.

## II.

### ASSIGNMENTS OF ERROR.

The court below erred—

1. In holding that Key was not liable to account to Fouke according to the articles of September 24, 1869.

2. In holding that the respective rights of Fouke and Key were adjusted and to be determined by the memorandum of November 5, 1875.

3. In refusing to grant the appellant the relief prayed by his bill of complaint.

4. In dismissing the bill of complaint.

## III.

### ARGUMENT.

Statements in an answer responsive to the averments in a bill are, when under oath under such circumstances as to make them evidence, evidence in favor of the defendant; but even under such circumstances averments which are not responsive must be sustained by proof. The replication denies every allegation in the answer, and the non-responsive portions must be proved before they can be used by the party making them. "When the answer which is put in issue admits a fact and insists upon a distinct fact by way of avoidance the fact admitted is established, but the fact insisted upon in avoidance must be proved; otherwise the admission stands as if the fact in avoidance had not been averred."

Moore *vs.* Clements, 6 Wall, 299, p. 315.
Humes *vs.* Scruggs, 94 U. S., 24.

*A fortiori* does this rule hold when, as in this case, the bill waives answer under oath (Rec., 6–7) and the rule of court under which such waiver is made distinctly provides that the answer, though under oath, except the directly responsive parts, shall not be evidence for the defendant unless the cause be set down for hearing on bill and answer only. (Rec., 22.)

But, of course, the admissions of the defendant in his answer, whether responsive or non-responsive to the bill, and whether under oath or not, are evidence against him.

Tested by these clear principles the case is easy of decision.

The bill clearly alleges, and the answer distinctly admits, the execution of both partnership agreements, that of August and that of September. The matters of defence set up by the answer are several and will be noticed in their order

*The Defences set up.*

1. Key asserts in his answer that the partnership of August "related exclusively to the prosecution of claims before the said (Mexican) Commission and constituted, as this respondent avers, the single and exclusive copartnership relation in respect to the prosecution of this description of claims that was at any time existing between this respondent and the intestate of the complainant" (Rec. 22, fol. 68), and that the partnership of September "contemplated the general practice of the law, *except* in respect to the prosecution of claims before the said Commission." (Rec. 24, fol. 69.)

This is bold ground, in view of the fact that the September articles distinctly provide that the business was to embrace "all matters pertaining to the profession of the law;" that an account of expenses should be kept "pertaining to *their business* (except *that part* in prosecuting claims under the treaty of July 4th, 1868, between the United States and Mexico);" that, notwithstanding this one exception in respect of an account of expenses, "*all sums received* by either party from their business" should be entered in a book kept for that purpose;" and that all sums received by said Key or Fouke under [the August] partnership '. . . [should] be equally divided by said Fouke and Key." (Rec. 8.)

The designation of the Mexican matters as "that part" of their business conclusively shows that it was embraced by the terms of the later partnership, and the pretended exception to it is found on examination to be only an exception as to keeping an account of the expenses relating to it.

2. The main defence is an attempted avoidance of the agreement of September. "The fact admitted"—viz., the partnership—"is established, but the fact insisted upon in avoidance must be proved; otherwise the admission stands as if the fact in avoidance had not been averred."

The avoidance set up in defence is stated at large in the answer. (Rec. 24, 7.) Its substance is as follows:

That Key, in November, 1869, removed to Washington, "and in view of his separate copartnership relations with [Fouke] they opened an office and put of the sign of 'Fouke & Key, attorneys-at-law.'"

That Fouke went from Terre Haute, Ind., where he was then residing, to New Orleans, with a view of arranging his personal business before coming to Washington to live and to enter on the practice of the law with Key, but thereafter, sometime in *January or February*, 1870, put in an appearance at Washington and informed Key that he was seeking and expecting an appointment as public administrator of New Orleans, in the event of obtaining which he would be obliged to remain in New Orleans and renounce his intention of residing in Washington and practicing law as the copartner of Key, and that while such residence at New Orleans would involve no change in the terms of the elder copartnership—that of August—it must, of necessity, cancel and alter the terms of the second copartnership—that of September.

That thereupon it was mutually and by words agreed between Fouke and Key that while there should be no change or alteration in the first copartnership, yet "in case *the said appointment should be so obtained and received*" by Fouke the second "should, as would also by law be implied in the premises, be vacated and dissolved;" that in lieu thereof they, Fouke and Key, should be associated and act together in business upon the following terms: Fouke to get himself employed at New Orleans as attorney in such claims ("expressly except, nevertheless, claims arising or to arise before the said [Mexican and American] Commission") requiring adjustment at Washington as he might be able, and send the claims to Key at Washington for prosecution, the compensation to be shared equally between them; that after the making of this verbal agreement Fouke returned to New Orleans, and was, on April 2, 1870, appointed public administrator, which office he continued to hold, residing at New Orleans until the summer of 1873.

That Fouke did procure himself to be employed in divers claims against the United States, which he sent on to Key, who presented them, only one, however, bringing any profit, the fee in which, amounting to $3,000, Fouke kept and gave Key no part thereof.

That in 1873 Fouke came to Washington from New Orleans, having ceased to be public administrator; that divers

of the claims sent up from New Orleans by Fouke were then pending and undetermined, and it was agreed between Key and Fouke "that the latter should occupy, without cost or charge, a portion of the law office of [Key], (whereat still remained the old firm sign of Fouke and Key), and should aid and assist [Key] in the further prosecution of such of the said claims as aforesaid to [Key] sent from the city of New Orleans by [Fouke] as were still pending and undetermined, and that in respect of any new and independent business, wherein they might think it needful or convenient to be mutually engaged or united, compensation should in such case be equally divided and shared between them."

Stated shortly, this avoidance of the September partnership amounts to just this: The partnership agreement, which was made in September, 1869, was "for the purpose of practicing law in the city of Washington;" in January or February, 1870, Fouke said that he would probably soon take up his residence in New Orleans, where he hoped to be Public Administrator, in which event the partnership must be dissolved, which would happen by law anyhow; that thereupon a new arrangement was made to go into effect, when Fouke should (not leave Washington, but) *obtain the appointment* of Public Administrator; and that Fouke did obtain that appointment on April 2, 1870.

In its nakedness this defense amounts to the simple proposition that it was "by words *agreed*" that Fouke's acceptance of the office, not his absence from Washington, was to dissolve the partnership. About this there can be no mistake. In one place Key speaks of an act done before the partnership had become dissolved "by reason of" Fouke's acceptance of the office (Rec. 28); in another he excuses an act in the firm name on the score of ignorance of Fouke's appointment, "and that the copartnership . . . *would require* a dissolution." (Ibid., fol. 82.)

*a.* The vital question is: Who has proved that agreement? It is conceded by the very defense itself that mere absence

was not to suffice to dissolve the partnership, a wise concession in view of the plain fact that the August partnership, which was still in full force, obligated Fouke "to render his services wherever they shall be needed" (Rec. 8, fol. 23), whether in Washington, New Orleans, or Mexico, and the other significant fact that the September agreement was kept from the knowledge of Fouke and Key's associates in the earlier one (Rec. 56, fol. 163). What word have we to sustain Key's contention? What book, record or even letter is produced to sustain it?

Not only have we no word or scratch of pen to prove this defense, but also we find much to disprove it.

By Key's own statement the partnership was formed September 24, 1869, and Fouke became public administrator of New Orleans April 2, 1870. During all the intervening time, by Key's own version of the matter, the partnership was in full force. The Weil case was sent to Key by Fouke in September; the first memorial therein was presented by Fouke and Key on March 12, 1870 (Rec. 27, fol. 80), and its prosecution thereby begun. Confessedly, all this was done under the partnership of September, Key's distinct averment being that it was before Fouke "had received, or had become assured of receiving, the appointment of public administrator aforesaid, and before the copartnership formed between [Key] and [Fouke] on the 24th day of September, 1869, had, *by reason of the acceptance by the latter of such appointment*, become vacated and dissolved." (Rec., 27–8.)

Key further admits that on April 27, 1870, over three weeks after Fouke's alleged appointment, he presented a more formal memorial, to which were set the names of "Fouke and Key" as solicitors, and this he attempts to explain by saying that he was then ignorant of Fouke's appointment, and that the copartnership, not *had been* dissolved but, "*would require* a dissolution" (Rec. 28, fol. 81–2); an explanation scarcely credible in view of the fact that, according to Key, he had been expecting the appointment since January or February, 1870. (Rec. 24, fol. 70–1.)

Crawford, a witness produced by Key, tells how Fouke was back and forth between Washington and New Orleans, and how, after the inauguration of the Mexican Commission and during the prosecution of business before it, sometime after March, 1870, (Rec. 64–5, fol. 187–8,) Fouke complained of Key's slowness and his (Fouke's) having to drop important business to come to Washington and give the Mexican business his personal attention. (Rec. 61, fol. 177.)

And, according to Key, even when Fouke finally became public administrator he still preserved a sort of partnership, which he fully describes; when Fouke ceased to hold the office he came back to Washington, and there resulted an entirely new arrangement, almost exactly like that of September, 1869, according to Key's interpretation of the latter, that is to say, they were to take business together when needful or convenient, and share all fees equally, *only* nothing is said of Mexican claims. (Rec., 25–26.) Of course, all these statements, being affirmative matter of defense and made in an answer oath to which was waived, cannot avail without proof, which is wholly wanting; but it is interesting to note that they show constant, unbroken partnership relations between Fouke and Key, the only form of partnership omitted by Key in the inventory of his very liberal assortment being, by a strange coincidence, that set out in the bill.

*b.* As further necessitating proof by Key of the avoidance relied on, it is to be remembered that the partnership was not of the indefinite sort, terminable at the will of either party, but was for a definite, limited period, to wit: From September 24, 1869, until September 24, 1871; which could not be so terminated.

"A partnership for a limited period cannot be dissolved at the mere pleasure of one of the partners, but may be dissolved for reasonable cause."

Cole *vs.* Moxley, 12 West Va., p. 547.
Story Part., Sec. 275 and notes.

"It is clear that there must be some special circumstance to justify a dissolution of a partnership before the term for which it was entered into has expired."

1 Lindley Part., *222.

And even when dissolved for cause it must be by decree of court, which, of course, involves the usual "due process of law." In such case, while it is the "reasonable cause" that occasions the dissolution, it yet is the decree that dissolves.

Story Part., *ubi supra.*

Key's claim is that the dissolution was within the limited period, and was by mutual consent. The principle just cited reinforces the necessity of proving this mutual consent.

*c.* And Key's contention stops at an interesting point: It fails to provide for the disposition of fees to be derived from cases pending at the time of the alleged dissolution.

It is a familiar principle that, unless otherwise arranged, on a dissolution the division of partnership assets will follow the terms of the partnership agreement, and that, if there be no other agreement, the division will be equal.

Story Part., Sec. 347 and n. 4, pp. 537–8, and Sec. 349 and notes.

It is conceded that the Weil case was instituted while the partnership was in force, and its prosecution was under way before Fouke's appointment as Public Administrator, and, accordingly, before the event on which Key claims the dissolution was to occur. Key makes no contention that the division of fees in this and similar cases was changed or in anywise affected by the pretended dissolution. This of itself entitles the appellant to the accounting prayed by the bill.

3. Key also contends that the memorandum of November 5, 1875 (p. 5 *ante*), was designed definitely to ascertain and

finally to settle and adjust, *both as amongst themselves and as against Weil*, the rights and interests of all the parties; "and upon the said agreement, as the act and deed in his lifetime of [Fouke, he] now *especially* insists and relies." (Rec., 29.)

This instrument is so plain that nothing but deference to the court below justifies dwelling upon it.

Fouke, by virtue of his authority from Weil, had interested one Boynton in Weil's case. To this Key objected. Weil had also employed one Boyce, and to this also some objection had been made. (Rec., 70, folio 202.) Fouke, Key, Hays, and De Castro were interested under the agreement of August, 1869. The agreement of September between Fouke and Key had been in a way secret, De Castro having never heard of it, and having only heard Fouke say in 1875 that he had some "private arrangements." (Rec., 56, folio 163.) And Fouke was very much harassed and worried by claims of creditors; and a New Orleans lawyer who knew that he was interested in the Weil claim and was to receive a large amount of money was urging him "with great pertinacity of purpose for a settlement of the cases of the creditors which he represented," while Fouke, who had promised that as soon as he got his moneys out of the Mexican cases "he would pay as nearly as he could all his New Orleans indebtedness," was yet anxious "to save as much as possible of the money he was to get out of the Weil case." (Rec., 69, fol. 199; 73, fol. 210.) In addition, Weil was an adjudged lunatic, and there were "apprehensions on the part of various parties that this man, L. B. Cain, might not agree to the arrangements made under the power of attorney made by Weil." (Rec., 69–70, fol. 201.) Fouke had interested Boynton in the claim of Weil, and Boyce had become interested in it, and these facts it was feared would create some difficulty in arriving at a settlement with Cain, who represented the interest of Weil. (Rec., 72, fol. 209.) Under these circumstances the memorandum was executed.

Attention is asked to the language of this instrument. It (1) secures to Boynton $59,561; (2) recites Weil's obligation to pay Key *and Hays* a sum equal to one-half the award; (3) secures to Key one-fourth of the remainder after deducting Boynton's amount; (4) recites the joint interest of Fouke, Hays, and De Castro in *Hays'* one-half of the original fee to Key and (not Fouke, but) Hays; (5) secures to Fouke, Hays, and De Castro each the interest just recited; (6) recites Boyce's engagement and services; and (7) secures to Boyce his interest accordingly.

All this is as against the estate of Weil, and, incidentally, against Hays. It is recited to be between Cain, representing Weil, of the *first* part, and all the others of the *second* part. It is wholly silent as to any security or adjustment as bebetween Fouke and Key, does not pretend to intimate that it constitutes an adjustment among all concerned, but only secures from Cain, representing Weil's estate, a confirmation of the obligations claimed to have been assumed by Weil or under his authority. No sort of reference is made to any possible arrangement among the parties "of the *second* part" touching the disposition of the amounts thus secured to them or any of them.

*The agreement by Fouke and Key to share fees in the Mexican cases is independent.*

But even had the general partnership under the September agreement been dissolved, as contended in the answer, Fouke's right to equal participation in the Mexican claims fees would not have been affected by such dissolution. The clause in the September agreement on this subject is wholly independent of the rest, and its recital is direct and distinct:

"It is understood and agreed that all sums received by said Key or Fouke under an agreement of partnership heretofore formed by said Key, Fouke, H. T. Hays, and J. O. DeCastro shall be equally divided by said Fouke and Key."

That this agreement as to those fees was intended to be distinct and independent from the rest of the arrangement, is as clear from a consideration of its subject matter as of its language.

The original convention between the United States and Mexico, establishing the Commission, provided that all claims should be decided by the Commissioners within two years and six months from the day of their first meeting. (Art. III, 15 Stats., 683.) That day was the 31st July, 1869, not quite two months before the date of the September agreement. This both Fouke and Key knew; and therefore they also knew that the two years and six months would not expire until January 31st, 1872. (In fact, the life of the Commission was extended from time to time, so that, as stated above, it did not expire until November 20th, 1876.)

Thus, although the general partnership formed by Fouke and Key, by that instrument of the 24th September, 1869 was limited to the 24th September, 1871, the Mexican Commission itself had a life to last at least until the 31st January following—over (4) four months longer—a not inconsiderable period, in comparison with that of a twenty-four months' partnership.

Nor is that all: it was also provided by Article IV of the Convention, that the total amount of awards on one side should be deducted from the total amount on the other, and the balance, to the amount of $300,000, should be paid at Mexico or at Washington (as the case might be), within twelve months from the *close* of the Commission, and the residue of the balance in annual instalments *thereafter*, until payment in full.

Of necessity, therefore, it was contemplated that the agreement for an equal division of the fees to arise from the Mexican claims was to continue until longer than the partnership; in other words, until the conclusion of the labors of Commissioners and Umpire and the distribution of the

awards—a wholly indefinite period, certainly sixteen months, and more than probably (as in fact proved the case), more than as many years, after the expiration by limitation of the general partnership created by the same instrument.

This agreement to share the fees derived from the August partnership thus becomes of the first importance. Its incorporation into the articles of September establishes its validity and vitality beyond question.

Fouke's mere entering into the September articles and operating under them, for however short a time, would have constituted a full legal and actual consideration for this specific agreement touching the fees under the August articles. Conceding for the sake of argument that there was a dissolution, it is not even contended, much less is it proved, that there was by the terms of the dissolution any abandonment of this agreement. The law will not presume to say that for all that Fouke would receive under this agreement, his entering into and continuing for several months in the partnership, was not an adequate consideration. In the nature of the case, no inquiry into the adequacy of such consideration is practicable. In partnership cases notoriously the law does not undertake such inquiries.

There being, then, legally adequate consideration for the special agreement, and (assuming a dissolution) no claim being made of any abrogation of the agreement or allowance on account of the consideration which had passed from Fouke, the necessary result is that the agreement remains and must control the division of the fees from the Mexican claims.

*The Settlement of the Marks Fee.*

In whatever light we view the relations of Fouke and Key, there is one circumstance in the case equally significant. Whether the September partnership continued in force until Fouke's death in October, 1876, or whether the

agreement to divide the Mexican claims fees was independent and continuing by reason of that fact, much light is thrown on the relations of the parties by the settlement of the fee in the Jonas Marks & Co. case.

DeCastro says that the Marks case stood on the same footing with the Weil case as to distribution of fees among the parties to the agreement of August (Rec., 55–56)—that is to say, that of the fee Key was entitled to one-half, and the others to one-sixth each, so that should DeCastro's proportion of that fee be about $1,700 (the amount he says he received in settling with Cain, as member of the firm of Jonas Marks & Co.), the proportion of each of Fouke and Hays would be the same and Key's would be about $5,100. In fact, however, Key admits receiving only *about* $3,600.

DeCastro's receipt to Cain is instructive (Rec., 51, 56):

> For value received I hereby transfer to L. B. Cain all my rights and fees arising out of the claim No. 639, awarded to Jonas Marks & Co. by the United States and Mexican Claims Commission. This fee having been agreed on between the claimants on one part and *the firm of Fouke & Key, attorneys,* on the second part, and as H. T. Hays and myself are interested with the parties of the second part in the prosecution of the said claims, I hereby by the present acknowledge receipt in full of *my individual fees,* as agreed and understood to be by all parties concerned.
>
> Done at the city of New Orleans, State of Louisiana, this 2nd day of June, A. D. one thousand eight hundred and seventy-six.
>
> (Signed) JB. O. DECASTRO.

This was in June, 1876, six years after Key says the September partnership was vacated and three years after Fouke's alleged return from New Orleans; and the respective amounts received by DeCastro and Key show very clearly that Key's amount was in accordance with the September agreement; for by that agreement Fouke's one-sixth and Key's one-half were to be added together and the sum equally divided, while DeCastro's proportion would still be

one-sixth. Fouke and Key would thus each receive one-third of the whole fee, or just double the amount to be received by DeCastro or Hays—a proportion almost exactly shown by the figures 3,600 and 1,700, themselves confessedly only approximate. (Rec., 30, fol. 89; 56, fol. 165.)

It thus seems certain that the September, 1869, agreement between Fouke and Key as to the Mexican claims fees was in full force and effect in 1876, six years after its alleged abandonment by the alleged agreement that is wholly unproved.

HENRY E. DAVIS,
*Appellant.*

# Supreme Court of the United States.

OCTOBER TERM 1887.

No. 7.

HENRY E. DAVIS, Adm'r d. b. n. of PHILIP B. FOULKE, deceased, Appellant,

*vs.*

HETTIE ANN KEY, Ex'trix JOHN J. KEY, deceased, Appellee.

## BRIEF IN BEHALF OF APPELLEE.

JOHN PAUL JONES,
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*Counsel for Appellee.*

*Press of Thomas McGill & Co., Washington, D. C.*

IN THE

# Supreme Court of the United States.

October Term 1887.—No. 7.

HENRY E. DAVIS, Adm'r d. b. n. of PHILIP B. FOULKE, Deceased, Appellant,

*vs.*

HELLIE ANN KEY, Ex'trix JOHN J. KEY, Deceased, Appellee.

## Brief in Behalf of Appellee.

Little need be said on behalf of appellee, except to state the facts, as they appear uncontradicted in the Record.

On August 10th, 1869, appellant's intestate and appellee's testator, together with H. T. Hays and Jacob O. De Castro, formed a copartnership, "for the purpose of prosecuting claims in behalf of the citizens of the United States of America against the Government of Mexico, and of the citizens of Mexico against the Government of the United States of America."

By its terms, it was "agreed that all fees received under this copartnership should be divided—*one-half part to said Key*, the other half to said Foulke, Hays and De Castro." (Record, p. 7, fol. 21.)

Foulke and Key afterwards, to wit, on the 24th September, 1869, entered into a separate agreement, whereby a general partnership for the practice of the law was formed. One clause provided as follows:

"It is understood and agreed that all sums received by

said Key or Foulke under an agreement of partnership heretofore formed by said Key, Foulke, H. T. Hays and J. O. DeCastro, shall be equally divided by said Foulke and Key." (Record, p. 8, fol. 24.)

This partnership was to last for the period of two years, and each was to give his undivided attention to the business of the firm. Foulke never complied with the terms of this agreement, but on April 2d, 1870 (Rec., p. 66, fol. 192, appellants brief, p. 14), accepted the position of Public Administrator in New Orleans, which he held until after the expiration of the two years specified in the agreement during which the partnership was to continue. During all this time he resided in New Orleans (Rec., p. 67, fol. 194), and could not have given his "undivided attention" to the business of "Foulke and Key," because he was holding a very lucrative and important public office. After leaving this office in 1872 or 1873, Foulke came to Washington and occupied the same office with Key for a time, finally moving into an office of his own in "D" street. (Rec., p. 66., fol. 193.) There is no pretense that Foulke ever attempted to enforce the agreement of September 24, 1869. On the contrary, it appears very clearly from the testimony of Mr. Crawford (Rec., p. 59) that the firm of Watterson and Crawford employed Key to assist them in the prosecution of certain claims against Mexico.

This was as early as March, 1870 (Rec., p. 63, fol. 183; p. 64, fol. 185), and Foulke afterwards declared to Crawford that he had nothing to do with the business they had given to Key. (Rec., p. 61, fol. 177.) If Foulke had not considered the agreement of 24th September canceled by his acceptance of the office of Public Administrator, he would certainly have asserted his right to share in the proceeds of these cases equally with Key, because the partnership therein outlined was general and equal. If, on the other hand, he considered that that instrument had been canceled, or that it had never gone into effect, he

would have made no claim to share in the Watterson and Crawford cases under the contract of August 10, 1869, because he was by its terms only to share in such claims as might be secured by himself, DeCastro and Hays. His avowal to Mr. Crawford, therefore, that he had no interest in those cases which his (Mr. C.'s) firm had put into Key's hands in March, 1870, was, in effect, a statement that the agreement of August 10th, 1869, was still in full force and effect. It also appears from the evidence of Byrne (Rec., p. 68, fol. 196) that in 1873 or 1874, after the award in the Weil case (the one involved in this controversy), Col. Foulke and Judge Key had a dispute in their office touching Foulke's interest in a certain case. Mr. Byrne says:

"I remember a particular occasion of dispute between Judge Key and Col. Foulke very well relative to the fees in some particular case. What the particular case was I do not remember now, but the controversy was ended by Col. Foulke suggesting that I take down on a piece of paper all the cases in which they were interested together, and that Judge Key produce his large account book, which he did. They then sat down together at one desk, and I at another, and they called off specific cases in which Col. Foulke was interested with Judge Key; and my recollection is that the memoranda which I made was compared with the entries in the book, and to their mutual satisfaction. That is the only occasion in which I know of any controversy."

The witness was on the most intimate terms with Col. Foulke (Rec., p. 70, fol. 202), and acted as clerk and amanuensis for both parties (Rec., p. 66, fol. 190), and he says that whatever dispute there may have been, if any, between the parties interested in the Weil claim was amicably adjusted (Rec., p. 68, fol. 198.)

"Q. Do you know whether any adjustment as between Col. Foulke and the defendant, or any other associate, in point of interest as counsel in the Weil case, was made during the lifetime of Col. Foulke?"